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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1168.

ROBERT GILMER, APPELLANT,

vs.

WILLIAM W. STONE AND JOSEPH M. WALKER, EXECUTORS OF ROBERT GILMER, DECEASED; THE BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, AND THE BOARD OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 15, 1886.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district before the Hon. Samuel H. Treat, district judge of said district, and, in the absence of the Hon. Walter Q. Gresham, judge of the seventh judicial circuit, on Friday, the fifteenth day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the one hundred and tenth year.

J. A. JONES, *Clerk.*

ROBERT GILMER
vs.
WILLIAM W. STONE and JOSEPH M. WALKER, Executors of Robert Gilmer, Deceased; The Board of Foreign Missions of the Presbyterian Church in the United States of America, and The Board of Home Missions of the Presbyterian Church in the United States of America. } In Chancery.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

2 Be it remembered that heretofore, on the twentieth day of May, in the year of our Lord one thousand eight hundred and eighty-five, came Robert Gilmer, the complainant herein, by Messrs. Bradley and Bradley, L. A. Whipp, and R. E. Lewis, his solicitors, and filed in the clerk's office of said court *their* bond for costs and bill of complaint, which said bond for costs and bill of complaint are in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, *ss:*

Circuit Court, Southern District of Illinois. July Term, A. D. 1885.
In Chancery.

ROBERT GILMER
vs.
WILLIAM W. STONE, JOSEPH M. WALKER, *et als.*

Bill for construction, etc., of will.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 20th day of May, 1885.

BRADLEY AND BRADLEY.

(Endorsed:) Filed May 20, 1885. J. A. Jones, clerk.

3 *Bill.*

To the judges of the circuit court of the United States for the southern district of Illinois:

Robert Gilmer, of Henry county, and a citizen of the State of Missouri, brings this his bill against William W. Stone and Joseph M. Walker (executors of Robert Gilmer, deceased), of Menard county, and citizens of the State of Illinois, and The Board of Foreign, and The Board of Home Missions, whose place of residence is unknown to petitioner. And therefore your orator, Robert Gilmer, complains and says that one Robert Gilmer, the nephew of your orator, late of Menard county, southern district and State of Illinois, but now deceased, on the twenty-fourth day of December, A. D. 1883, executed a certain instrument in writing, purporting to be his last will and testament, and afterwards, on the thirty-first day of December, A. D. 1883, departed this life leaving no widow surviving him, nor any children, no parents, nor grandparents, nor great-grandparents, nor any descendants of child or children, and no brother or sister, and your orator, as his next of kin, being his only heir-at-law and legal representative, your orator being the brother of the father of the said Robert Gilmer, deceased, and that no other uncle or aunt of

4 said deceased survived him; that the said Robert Gilmer, deceased, in his lifetime and at the time of his death, was possessed of a large estate, to wit, four thousand dollars in money and personal property, and also was seized in fee-simple of a large amount of real estate, to wit, four hundred and thirty acres of land, all situated in Menard county, in the State of Illinois. And your orator further represents that the said Robert Gilmer, deceased, in and by the said instrument of writing so purporting to be his last will and testament, professedly bequeathed his estate and property as follows—that is to say:

"To Lucan B. Shelly, all my wearing appeal and bed-clothes; to Robert Shelly, my organ and also one hundred dollars to pay tuition in music; to Jane E. Stone, my buggy and harness; to the parsonage of the Presbyterian Church of Irish Grove, my library; to the trustees of the Irish Grove Cemetery, money sufficient to pay the present indebtedness; also sufficient money out of the general funds for the removal of my father's family and the purchase of a lot in the new addition of the Irish Grove Cemetery; also one thousand dollars to erect a family monument to same; to Jannie L. Stone, five hundred dollars; also five hundred toward the erection of a Presby-

5 terian church at Greenview, Illinois; also, after paying all debts and claims against my estate [I] bequeath and devise the remainder of my estate to be equally divided between the board of foreign and the board of home missions."

All of which will more fully appear from the said instrument in writing when produced in court and from a copy of the same, which is hereto attached marked "Exhibit A" and is made a part of this bill.

Your orator further represents unto your honors that on the eight-day of January, A. D. 1884, the said instrument purporting to be

the last will and testament of the said Robert Gilmer, deceased, was exhibited to the probate court of the county of Menard, southern district and State of Illinois, for probate, and the same was then and there probated; and letters testamentary thereon were granted to William W. Stone and Joseph M. Walker, the persons named in the said instrument of writing as executors, and they each and jointly took upon themselves the executorship of the said will of the said Robert Gilmer, deceased.

Your orator further represents unto your honors that there are grave doubts in the mind of your orator as to the proper con-
6 struction and the legal effect that should be given to the eleventh section or clause of said will; that your orator believes that the terms or language employed in said attempted devise or bequest named in said section or clause of said will are so vague, indefinite, and uncertain that they are inoperative and void and of no effect; that said clause or section of said will does not state and your orator is not informed as to whether said board of foreign and home missions are corporate or incorporate bodies, or whether they are charitable or religious associations or corporations, or what particular foreign and home missions are intended by said clause of said will.

And your orator further alleges that if said corporations or associations are for religious purposes, then, unless they are organized under the laws of the State of Illinois, they cannot legally receive by bequest or devise real estate of any amount or kind whatever.

And your orator would further show that there will not be more than a sufficient amount of all the said personal property of said decedent to pay and discharge the gifts and legacies, not including the said attempted devise or bequest in said clause or section eleven of said will, and that there will be nothing remaining of the
7 said estate to apply on said devise attempted to be made in said section eleven, except the said land or real estate of decedent.

And your orator further represents that said attempted devise in said section, or clause eleven of said will does not specify to what particular foreign or home mission the said demise is to be given; and your orator is informed and believes there are a great number of such societies or associations called home and foreign missions, and said clause or section eleven of said will does not designate for what use said devise is to be given, whether for religious, charitable, or other purposes, nor does it designate any party or parties as trustees to receive and control said trust or devise.

Forasmuch, therefore, as your orator is without remedy in the premises, except in a court of equity, and to the end that the said Lucen B. Shelly, Robert Shelly, Jane E. Stone, The Presbyterian Church of Irish Grove, The Trustees of Irish Grove Cemetery, Jannie L. Stone, The Board of Foreign and Home Missions, William W. Stone, and Joseph M. Walker, executors of the last will and testament of Robert Gilmer, deceased, who are made parties defend-
ant to this bill, may be required to answer the same, but not
8 under oath, the answer under oath being hereby waived; that the said instrument in writing and the probate thereof,

so far as it relates to the eleventh section or clause of said will of Robert Gilmer, deceased, be set aside and this court shall construe the said section or clause eleven of said will as to its legal effect, and that the balance of said estate, after allowing and paying the bequests contained in said will (excepting the attempted bequests to the Board of Foreign and Home Missions, under the eleventh section or clause of said will, and that said section or clause be declared null and void), be decreed and ordered paid to your orator as the sole heir-at-law of the said Robert Gilmer, deceased, and that your orator shall have such other and further belief in the premises as equity may require and to your honors shall seem meet.

May it please your honors to grant the writ of summons in chancery, directed to the marshal of the southern district of Illinois, commanding him to summon the defendants, William W. Stone and Joseph M. Walker, executors of the will of Robert Gilmer, deceased, and the Board of Foreign and the Board of Home Missions, to appear before the next June term of this court, to be held in the
9 court-house, in Springfield, southern district and State of Illinois, and then and there to answer this bill, etc.

BRADLEY AND BRADLEY AND
L. A. WHIPP AND R. E. LEWIS,
Attorneys for Petitioners.

EXHIBIT "A."

Copy of Will.

I, Robert Gilmer, of Irish Grove, Menard county, and State of Illinois, declare this to be my last will and testament.

I give and bequeath and devise my estate as follows:

1st. I give [and] bequeath to Lucena B. Shelly my wearing apparel and bed-clothes.

2nd. I also bequeath to Robert Shelly my organ; also one hundred dollars to pay tuition in music, to be held by administrators and paid by them when tuition becomes due.

3rd. I also bequeath to Jane E. Stone my buggy and harness.

4th. I also bequeath my library to the parsonage of the Presbyterian Church of Irish Grove.

5th. I also bequeath to the trustees of the Irish Grove Cemetery money sufficient to pay the present indebtedness of the cemetery.

6th. Also appropriate money sufficient out of the general fund for the removal of my father's family and the purchase of lot in
10 the new addition of the Irish Grove Cemetery; also one thousand dollars for erection of a monument to the same.

7th. I also bequeath to Jennie L. Stone five hundred dollars.

8th. I also authorize my administrators to loan W. J. Bollman, of Bellview, Nebraska, five hundred dollars.

9th. I also bequeath five hundred dollars toward the erection of a Presbyterian church in Greenview, Illinois, provided the same shall be built within two years from this date; if not, the money

shall revert back to the administrators to be used as hereinafter provided.

10th. I also bequeath fifty dollars to be paid on the minister's salary of the Presbyterian Church of Irish Grove for the year 1884.

11th. I also, after paying all debts and claims against my estate, bequeath and devise the remainder of my estate to be equally divided between the board of foreign and the board of home missions.

I appoint William W. Stone and Joseph M. Walker executors of this my will and testament.

I- witness whereof I, Robert Gilmer, have hereunto set my hand and seal the twenty-fourth day of December, one thousand eight hundred and eighty-three.

ROBERT GILMER. [SEAL.]

Subscribed by the testator in the presence of each of us and at the same — declared by him to us as his last will and testament.

Witness our hands this 24th day of December, 1883.

W. W. STONE.
JOSEPH M. WALKER.
JOHN H. STONE.

(Indorsed:) Filed May 20, 1885. J. A. Jones, clerk.

11 And afterwards, to wit, on said twentieth day of May, of the year aforesaid, a writ of subpœna was issued out of said clerk's office, directed and delivered to the marshal of said district to execute, which said subpœna, together with the return of [the] marshal thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } ss:

The United States of America to William W. Stone and Joseph M. Walker, executors of the will of Robert Gilmer, deceased, and the Board of Foreign and the Board of Home Missions, Greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois at Springfield, in said district, on the first Monday in the month of July next, to answer the bill of complaint of Robert Gilmer, this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such order and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

12 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield, aforesaid, this twentieth day of May, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundredth and ninth year.

[L. S.] J. A. JONES, *Clerk.*

so far as it relates to the eleventh section or clause of said will of Robert Gilmer, deceased, be set aside and this court shall construe the said section or clause eleven of said will as to its legal effect, and that the balance of said estate, after allowing and paying the bequests contained in said will (excepting the attempted bequests to the Board of Foreign and Home Missions, under the eleventh section or clause of said will, and that said section or clause be declared null and void), be decreed and ordered paid to your orator as the sole heir-at-law of the said Robert Gilmer, deceased, and that your orator shall have such other and further belief in the premises as equity may require and to your honors shall seem meet.

May it please your honors to grant the writ of summons in chancery, directed to the marshal of the southern district of Illinois, commanding him to summon the defendants, William W. Stone and Joseph M. Walker, executors of the will of Robert Gilmer, deceased, and the Board of Foreign and the Board of Home Missions, to appear before the next June term of this court, to be held in the
9 court-house, in Springfield, southern district and State of Illinois, and then and there to answer this bill, etc.

BRADLEY AND BRADLEY AND
L. A. WHIPP AND R. E. LEWIS,
Attorneys for Petitioners.

EXHIBIT "A."

Copy of Will.

I, Robert Gilmer, of Irish Grove, Menard county, and State of Illinois, declare this to be my last will and testament.

I give and bequeath and devise my estate as follows:

1st. I give [and] bequeath to Lucena B. Shelly my wearing apparel and bed-clothes.

2nd. I also bequeath to Robert Shelly my organ; also one hundred dollars to pay tuition in music, to be held by administrators and paid by them when tuition becomes due.

3rd. I also bequeath to Jane E. Stone my buggy and harness.

4th. I also bequeath my library to the parsonage of the Presbyterian Church of Irish Grove.

5th. I also bequeath to the trustees of the Irish Grove Cemetery money sufficient to pay the present indebtedness of the cemetery.

6th. Also appropriate money sufficient out of the general fund for the removal of my father's family and the purchase of lot in the new addition of the Irish Grove Cemetery; also one thou-
10 sand dollars for erection of a monument to the same.

7th. I also bequeath to Jennie L. Stone five hundred dollars.

8th. I also authorize my administrators to loan W. J. Bollman, of Bellview, Neb., twelve hundred dollars.

9th. I also bequeath five hundred dollars toward the erection of a Presbyterian church in Greenview, Illinois, provided the same shall be built within two years from this date; if not, the money

shall revert back to the administrators to be used as hereinafter provided.

10th. I also bequeath fifty dollars to be paid on the minister's salary of the Presbyterian Church of Irish Grove for the year 1884.

11th. I also, after paying all debts and claims against my estate, bequeath and devise the remainder of my estate to be equally divided between the board of foreign and the board of home missions.

I appoint William W. Stone and Joseph M. Walker executors of this my will and testament.

I- witness whereof I, Robert Gilmer, have hereunto set my hand and seal the twenty-fourth day of December, one thousand eight hundred and eighty-three.

ROBERT GILMER. [SEAL.]

Subscribed by the testator in the presence of each of us and at the same — declared by him to us as his last will and testament.

Witness our hands this 24th day of December, 1883.

W. W. STONE.
JOSEPH M. WALKER.
JOHN H. STONE.

(Indorsed:) Filed May 20, 1885. J. A. Jones, clerk.

11 And afterwards, to wit, on said twentieth day of May, of the year aforesaid, a writ of subpœna was issued out of said clerk's office, directed and delivered to the marshal of said district to execute, which said subpœna, together with the return of [the] marshal thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The United States of America to William W. Stone and Joseph M. Walker, executors of the will of Robert Gilmer, deceased, and the Board of Foreign and the Board of Home Missions, Greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois at Springfield, in said district, on the first Monday in the month of July next, to answer the bill of complaint of Robert Gilmer, this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such order and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

12 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield, aforesaid, this twentieth day of May, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundredth and ninth year.

[L. S.] J. A. JONES, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court at Springfield, aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

J. A. JONES, *Clerk.*

I hereby appoint M. T. Hargrave my deputy to execute the within writ.

Dated Springfield, June 13th, 1885.

JOHN R. TANNER,
U. S. Marshal So. Dist. Illinois.

I have served the within writ upon the persons therein named in the following manner, to wit:

Upon William W. Stone on the 15th day of June, A. D. 1885; also upon Joseph M. Walker on the 15th day of June, A. D. 1885, by personally delivering [to] each of them a copy of the same on the aforesaid day. The Board of Foreign and the Board of Home Missions not found in my district.

JOHN R. TANNER,
U. S. Marshal,
By M. T. HARGRAVE, *Deputy.*

(Indorsed:) Filed June 25, 1885. J. A. Jones, clerk.

13 Afterwards, to wit, on the first day of July, of the year last aforesaid, an affidavit alleging the non-residence of the Board of Home and Foreign Missions was filed in the clerk's office of said court, which said affidavit is in the words and figures following, to wit:

Bill for Construction of Will, etc.

In the Circuit Court. In Chancery.

ROBERT GILMER
vs.
WILLIAM W. STONE, THE BOARD OF HOME MISSIONS, *et al.*

UNITED STATES OF AMERICA, }
Southern District of Illinois, } *ss:*

L. H. Bradley, being duly sworn, on oath says he is one of the attorneys for the complainant in the above-entitled cause; that the Board of Home and Foreign Missions, one of the defendants therein, is not a resident of the State of Illinois, and that the place of residence of said defendant is unknown to affiant; and further affiant saith not.

L. H. BRADLEY.

Subscribed & sworn to before me, July 1, 1885.

J. A. JONES, *Clerk.*

(Indorsed:) Filed July 1, 1885. J. A. Jones, clerk.

14 Whereupon, on the third day of July, in the June term of said court, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Order on Board of Foreign & Home Missions.

ROBERT GILMER
v.
WILLIAM W. STONE and JOSEPH M. WALKER, Executors of the Estate of Robert Gilmer, Deceased, and The Board of Foreign and the Board of Home Missions. } In Chancery.

Whereas it appears that this is a suit in equity, commenced in this court, to enforce a legal and equitable lien against the real property in the bill herein set forth, to wit, within the district aforesaid; and it further appearing to the court that the above-named defendant, The Board of Foreign and the Board of Home Missions, is not a resident of the State of Illinois, and that the place of residence is unknown: It is therefore ordered, adjudged and decreed that the Board of Foreign and the Board of Home Missions appear and plead, answer, or demur to the complainant's bill of complaint in said cause on file in this court at the office of the clerk of this court, at the city of Springfield, in the county of Sangamon
15 and State of Illinois, on or before Tuesday, the 18th day of August next.

It is further ordered that this order be served on said non-resident defendant by publishing the same in the "Illinois State Journal," a newspaper published at said city of Springfield, for six weeks consecutively.

Then afterwards, to wit, on the twenty-seventh day of July, of the year last aforesaid, came the defendants, William W. Stone and Joseph M. Walker, executors of the estate of Robert Gilmer, deceased, by S. H. Blane, their solicitor, and filed in the clerk's office of said court their answer to said bill of complaint herein, which said answer is as follows, to wit:

Answer of Wm. W. Stone & Joseph M. Walker, Executors, &c.

In the Circuit Court of the United States, Southern District of Illinois.

ROBERT GILMER *v.* WILLIAM W. STONE *et al.*, Executors, &c.

The answer of William W. Stone and Joseph M. Walker, executors of the estate of Robert Gilmer, deceased, to the bill of com-
16 plaint in the above-entitled cause.

These defendants, answering the bill of complaint in the above-entitled cause, say they admit that one Robert Gilmer, late of Menard county, in the State of Illinois, departed this life on or about the 31st day of December, 1883, leaving him surviving as his only heir-at-law the complainant in the above-entitled cause;

that said deceased in his lifetime, to wit, on the 24th day of December, 1883, made his last will and testament in words and figures set forth in the exhibit annexed to the original bill therein; that said will was afterwards, to wit, on the 8th day of January, A. D. 1884, duly probated in the county court of said Menard county, and letters of executorship granted to respondents, who qualified as such executors and entered upon the discharge of their duties in carrying into effect the provisions of the will of said deceased.

They admit that said Robert Gilmer, deceased, left an estate in said Menard county, consisting mainly of lands and personal property.

That these defendants have carried out the directions of the first ten clauses of said will, so far as practicable, and respectfully submit the construction of the eleventh or residuary clause of
17 said will to this honorable court, praying that they may be directed by order of this court to which of the claimants they shall pay the money left in their hands under said eleventh clause of said will, whether to said Robert Gilmer, complainant, or to the Board of Foreign Missions of the Presbyterian Church and to the Board of Home Missions of the Presbyterian Church in equal parts, the last-mentioned disposition of said funds being, as these respondents verily believe, the one intended by said Robert Gilmer, deceased.

WILLIAM W. STONE.
JOSEPH M. WALKER.

S. H. BLANE, *Solicitor.*

(Indorsed:) Filed July 27, 1885. J. A. Jones, clerk.

Then afterwards, to wit, on the twelfth day of August, in the June term of said court, of the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

18 *Leave to File Additional Answer.*

ROBERT GILMER
v.
WILLIAM W. STONE *et al.* } In Chancery.

On motion of defendants, by Messrs. Stuart, Edwards and Brown, their solicitors, leave is granted to file an additional answer herein.

Additional Answer of Stone & Walker, Executors, &c.

In the Circuit Court of the United States, Southern District of Illinois.

ROBERT GILMER *v.* WILLIAM W. STONE *et al.*, Executors, &c.

The answer of William W. Stone and Joseph M. Walker, executors of the estate of Robert Gilmer, deceased, to the bill of complaint in the above-entitled cause.

These defendants, answering to the bill of complaint in the above-

entitled cause, say they admit that one Robert Gilmer, late of Menard county, in the state of Illinois, departed this life on or about the 31st day of December, 1883, leaving him surviving
19 as his only heir-at-law the complainant in the above-entitled cause.

These defendants, answering the bill of complaint in the above-entitled cause, say they admit that one Robert Gilmer, late of Menard county, in the State of Illinois, departed this life on or about the 31st day of December, 1883, leaving him surviving, as his only heir-at-law, the complainant in the above-entitled cause; that said deceased in his lifetime, to wit, on the 24th day of December, 1883, made his last will and testament in words and figures set forth in the exhibit annexed to the original bill herein; that said will was afterwards, to wit, on the 8th day of January, 1884, duly probated in the county court of said Menard county, and letters of executorship granted to respondents, who qualified as such executors, and entered upon the discharge of their duties in carrying into effect the provisions of the will of said deceased. They admit that said Robert Gilmer, deceased, left an estate in said Menard county, consisting mainly of lands and personal property.

That these defendants have carried out the directions of the first ten clauses of said will, so far as practicable, and respectfully submit the construction of the eleventh or residuary clause of said
20 will to this honorable court, praying that they be directed by order of this court to which of the claimants they shall pay the money left in their hands under said eleventh clause of said will.

These defendants, furthering answering, say that the Board of Foreign Missions of the Presbyterian Church, a corporation created under and by virtue of the laws of the State of New York, and the Board of Home Missions of the Presbyterian Church of the U. S., a corporation created under and by virtue of the laws of the State of New York, have notified them that they claim to be the devisees of said testator referred to in said will, and that these defendants believe and claim that they are said devisees.

And defendants, further answering, say that said Robert Gilmer was, during all the latter portion of his life, a faithful and consistant member of the Presbyterian church; that during his lifetime he had made many and liberal donations to different organizations in that body, and notably the bodies above mentioned. And these defendants believe and charge that the boards above mentioned were those mentioned by testator in his last will and testament.

And, further answering, defendants say that said boards
21 are necessary parties to this suit, and the said bill of complaint is defective in not making them parties.

W. W. STONE.
JOSEPH M. WALKER.

Subscribed and sworn to before me, August 10th, A. D. 1885.
[SEAL.] THOS. C. BENNETT,
Circuit Clerk Menard Co., Ill's.

(Indorsed:) Filed August 12, 1885. J. A. Jones, clerk.
2—1168

Afterwards, to wit, on the seventh day of September, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Entry of Appearance of Board of Home Missions & Board of Foreign Missions.

ROBERT GILMER
vs.
WILLIAM W. STONE *et al.* } In Chancery.

This day came the Board of Home Missions *in* the Presbyterian Church in the United States of America and Board of Foreign Missions of the Presbyterian Church in the United States of America, by Messrs. Stuart, Edwards, and Brown, their solicitors, and enter their appearance herein.

22 Now afterwards, to wit, on the ninth day of September, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Making Board of Foreign Missions et al. Parties Defendant.

ROBERT GILMER
v.
WILLIAM W. STONE *et al.* } In Chancery.

This day came the parties, and, on the suggestion and motion of the solicitors for defendants, it is ordered that the Board of Foreign Missions of the Presbyterian Church in the United States of America and the Board of Home Missions of the Presbyterian Church in the United States of America be made parties defendant in this cause in pursuance of the 52 rule of this court.

Then afterwards, to wit, on the seventeenth day of September, of the year last aforesaid, came the defendants, The Board of Foreign Missions of the Presbyterian Church in the United States of America and The Board of Home Missions of the Presbyterian Church
23 in the United States of America, and filed in the clerk's office of said court their separate answers herein, which said answers are in the words and figures following, to wit:

Answer of Board of Foreign Missions of the Presbyterian Church.

In the Circuit Court of the United States, Southern District of Illinois.

ROBERT GILMER *vs.* WILLIAM W. STONE *et al.*

The answer of the Board of Foreign Missions of the Presbyterian Church in the United States of America to the bill of complaint in the above-entitled cause.

This defendant, answering the bill of complainant in the above-

entitled cause, says it admits that one Robert Gilmer, late of Menard county, in the State of Illinois, departed this life on or about the 31st day of December, 1883, leaving him surviving as his only heir-at-law the complainant in the above-entitled cause; that said deceased in his lifetime, to wit, on the 24th day of December, 1883, made his last will and testament in words and figures set forth in the exhibit annexed to the original bill herein.

24 That said will was afterwards, to wit, on the 8th day of January, 1884, duly probated in the county court of said Menard county, and letters testamentary granted to William W. Stone and Joseph M. Walker, who qualified as such executors and entered upon the discharge of their duties in carrying into effect the provisions of the will of said deceased.

It admits that said Robert Gilmer, deceased, left an estate in said Menard county, consisting mainly of lands and personal property; that said executors have carried out the directions of the first ten clauses of said will, so far as practicable, and await the order of this honorable court as to the eleventh or residuary clause.

This defendant, further answering, says that the Board of Foreign Missions of the Presbyterian Church of the United States of America, a corporation created under and by virtue of the laws of the State of New York, claims to be a devise of said testator referred to in said will.

And defendant, further answering, says that said Robert Gilmer was during all the latter part of his life a faithful and consistent member of the Presbyterian church; that during his lifetime he had made many and liberal donations to different organiza-

25 tions in that body, and notably to the body now answering, *i. e.*, the Board of Foreign Missions of the Presbyterian Church.

Respondent, further answering, says that this corporation was called by members of the church in which the said Robert Gilmer worshiped the Board of Foreign Missions, and his contributions for foreign missionary purposes were made to and received by respondent during the lifetime of said Robert Gilmer, and with the full knowledge on his part that the Board of Foreign Missions of the Presbyterian Church of the United States was receiving the benefit of said donations.

And respondent, further answering, says that it is the devisee mentioned in said will and should be a party to this suit, and files herewith a certified copy of its charter, showing its authority to collect and receive donations and bequests.

And now, having answered, said defendantprays that a decree be entered ordering said executors to pay over to said Board of Foreign Missions its bequest mentioned in said eleventh clause of said will; that it be dismissed and its costs refunded, as in duty bound, etc.

THE BOARD OF FOREIGN MISSIONS [SEAL.]
OF THE PRESBYTERIAN CHURCH
OF THE U. S. OF AMERICA.

26 William Rankin, treasurer of said board, being duly sworn, states that he has read the above answer, and the facts so far stated on his own knowledge are true, and those stated on the information of others he believes to be true.

EMILIANO P. BERGANIMO. [SEAL.]
Notary Public.

UNITED STATES OF AMERICA, *State of New York:*

By Joseph B. Carr, secretary of state and custodian of the great seal thereof.

It is hereby certified that the secretary of state of the State of New York is the custodian of the great seal of said State and of the original laws thereof, and that the seal hereto annexed is the great seal of said State, and was affixed hereto by proper authority, and that the annexed is a true and correct transcript of the original law on file in the office of the said secretary of state and of the whole of the said original law.

In testimony whereof I have hereunto set my hand and affixed the great seal of said State, at the city of Albany, the fourth day of September, eighteen hundred and eighty-five.

[SEAL.] JOSEPH B. CARR,
Secretary of State.

27 An act to incorporate the Board of Foreign Missions of the Presbyterian Church in the United States of America. Passed April 12th, 1862, Chapter 187.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Walter Lowrie, Gardiner Spring, William W. Phillips, George Potts, William Bannard, John D. Wells, Nathan L. Rice, Robert L. Stuart, Lebbeus B. Ward, Robert Carter, John C. Lowrie, citizens of the State of New York, and such others as they may associate with themselves, are hereby constituted a body corporate and politic forever, by the name of the Board of Foreign Missions of the Presbyterian Church in the United States of America, for the purpose of establishing and conducting Christian missions among the unevangelized or pagan nations and the general diffusion of Christianity; and by that name they and their successors and associates shall be capable of taking by purchase, grant, devise, or otherwise, holding, conveying, or otherwise disposing of any real or personal estate for the purposes of said corporation, but which estate, within this State, shall not at any time exceed the annual income of twenty thousand dollars.

28 SECTION 2. The said corporation shall possess the general powers, rights, and privileges, and be subject to liabilities and provisions contained in the eighteenth chapter of the first part of the Revised Statutes, so far as the same is applicable, and also subject to the provisions of chapter three hundred and sixty of the laws of eighteen hundred and sixty.

SECTION 3. This act shall take effect immediately.

(Indorsed:) Filed September 17, 1885. J. A. Jones, clerk.

Answer of Board of Home Missions, &c.

In the Circuit Court of the United States, Southern District of Illinois.

ROBERT GILMER *vs.* WILLIAM W. STONE *et al.*

The answer of the Board of Home Missions of the Presbyterian Church in the United States of America to the bill of complaint in the above-entitled cause.

This defendant, answering the bill of complainant in the above-entitled cause, says it admits that one Robert Gilmer, late of
29 Menard county, in the State of Illinois, departed this life on or about the 31st day of December, 1883, leaving him surviving as his only heir-at-law the complainant in the above-entitled cause; that said deceased in his lifetime, to wit, on the 24th day of December, 1883, made his last will and testament in words and figures set forth in the exhibit annexed to the original bill herein.

That said will was afterwards, to wit, on the 8th day of January, 1884, duly probated in the county court of said Menard county, and letters testamentary granted to William W. Stone and Joseph M. Walker, who qualified as such executors and entered upon the discharge of their duties in carrying into effect the provisions of the will of said deceased.

It admits that said Robert Gilmer, deceased, left an estate in said Menard county, consisting mainly of lands and personal property; that said executors have carried out the directions of the first ten clauses of said will, so far as practicable, and await the order of this honorable court as to the eleventh or residuary clause.

This defendant, further answering, says that the Board of Home Missions of the Presbyterian Church in the United States of
30 America, a corporation created under and by virtue of the laws of the State of New York, claims to be a devisee of said testator referred to in said will.

And defendant, further answering, says that said Robert Gilmer was during all the latter part of his lifetime a faithful and consistent member of the Presbyterian church; that during his lifetime he had made many and liberal donations to different organizations in that body, and notably the body now answering, *i. e.*, the Board of Home Missions of the Presbyterian Church.

Respondent, further answering, says that this corporation was called by members of the church in which the said Robert Gilmer worshiped the Board of Home Missions, and his contributions for home missionary purposes were made to and received by this respondent during the lifetime of the said Robert Gilmer, and with the full knowledge on his part that the Board of Home Missions of the Presbyterian Church of the United States was receiving the benefit of said donations.

And respondent, further answering, says that it is the devisee mentioned in said will, and should be a party to this suit, and files herewith a certified copy of its charter showing its authority to collect and receive donations and bequests.

31 And now, having answered, said defendant asks that a decree be entered ordering said executors to pay over to said Board of Home Misssons its bequest mentioned in said eleventh clause of said will; that it be dismissed, and its costs refunded, as in duty bound, &c.

[SEAL.] THE BOARD OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA,
By O. D. EATON, *Treasurer.*
STUART, EDWARDS, AND BROWN,
Sol's for Def't,

O. D. Eaton, being duly sworn, states that he is the treasurer of the above-named corporation, and has read the above answer, and the facts, so far as stated on his own knowledge, are true, and those stated on the information of others he believes to be true.

O. D. EATON.

Sworn to before me this 12th day of September, 1885.
[SEAL.] N. J. O'CONNELL,
Notary Public, N. Y. Co.

CHAPTER 287.

An act to incorporate the Board of Home Missions of the Presbyterian Church in the United States of America and to enable the Presbyterian Board of Home Missions, formerly the Presbyterian Committee of Home Missions, [to] transfer its property
32 to said new corporation and to vest in such new corporation the corporate rights, franchises, and privileges of the former body, and also to enable said new corporation to accept a transfer of the property of the trustees of the Board of Domestic Missions of the General Assembly of the Presbyterian Church in the United States of America, and to become the legal successor of the said last-named corporation.

Passed April 19th, 1872.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. George L. Prentice, Thomas S. Hastings, William M. Paxton, William C. Roberts, I. F. Stearns, Henry J. Van Dyke, James O. Murray, Edward A. Lambert, Jacob D. Vermilye, George W. Lane, Thomas C. M. Paton, Joseph F. Joy, Robert L. Kennedy, George R. Lockwood, John Taylor Johnson (designated for this purpose by the General*ly* Assembly of the Presbyterian Church in the United States of America, which met in Chicago, in the State of Illinois, in May, eighteen hundred and seventy-one, and which is the legal successor of the two religious bodies theretofore existing under that same name), and their successors in office chosen
33 from — to time by the said General Assembly, are hereby constituted a body politic and corporate by the name of the Board of Home Missions of the Presbyterian Church in the United

States of America, the object of which shall be to assist in sustaining the preaching of the gospel in feeble churches and congregations in connection with the Presbyterian Church in the United States and generally to superintend the whole work of home missions in behalf of said church, as the General Assembly shall from time to time direct; also, to receive, take charge of, and disburse all property and funds which at any time and from time to time may be intrusted to said church or said board for home missionary purposes.

§ 2. The said corporation shall possess the general powers and be subject to the provisions contained in title three of chapter eighteen of the first part of the Revised Statutes, so far as the same are applicable and have not been repealed or modified.

§ 3. The management and disposition of the affairs and the property of said corporation shall be vested in the persons named in the first section of this act and their successors in office, who shall remain in office for such period and be removed and
34 succeeded by others chosen at such time and in such manner as the said general assembly of the Presbyterian Church in the United States of America shall from time to time direct and appoint.

§ 4. The said corporation shall be in law capable of taking, receiving, and holding any real or personal estate which has been or may hereafter be given, devised, or bequeathed to it or to the said church for the purposes aforesaid, or which may accrue from the use of the same, subject, however, to all the provisions of law relating to devises and bequests by last will and testament; but the said corporation shall not take and hold real and personal estate the annual rental or income of which shall exceed the sum of two hundred thousand dollars.

§ 5. The Presbyterian Committee of Home Missions, incorporated under the laws of this State by an act passed on the eighteenth day of April, eighteen hundred and sixty-two, the name of which was changed to the Presbyterian Board of Home Missions by an act passed on the twentieth day of January, eighteen hundred and seventy-one, are hereby authorized to assign, transfer, convey, and deliver
35 unto the corporation created by this act all the property, estates, and rights of any and every description now held or enjoyed by them, and which may hereafter be received by them by virtue of any grant, gift, bequest, or devise, or otherwise howsoever, which assignment, transfer, conveyance, and delivery the corporation established by this act is hereby authorized and empowered to accept and receive; and the said corporation hereby created shall be and is hereby declared to be the legal successor of the said Presbyterian Board of Home Missions, formerly the Committee of Home Missions, and shall have, hold, use, and enjoy all the corporate powers, franchises, and privileges of the said corporation last named and all the property, estate, and rights so assigned, transferred, conveyed, and delivered in the same manner and to the same extent as the said corporation last named might have done, and shall be entitled to receive, sue for, and recover all legacies, devises, bequests,

and property which have heretofore been, or may hereafter be, made or given to the said corporation last named: Provided, however, and it is hereby expressly declared, That the said corporation
36 created by this act shall receive and hold the said property, estates, and rights upon the same trusts and for the same purposes only as the same are or otherwise would be held by the said Presbyterian Board of Home Missions, formerly the Presbyterian Committee of Home Missions.

§ 6. Whenever the requisite power shall be given by the proper authority of the State of Pennsylvania to the trustees of the Board of Domestic Missions of the General Assembly of the Presbyterian Church in the United States of America, a corporation created and established and now existing under the laws of the said State of Pennsylvania, to assign, transfer, convey, and deliver unto the corporation created by this act all the property, estate, and rights of any and every description held or enjoyed or which may be hereafter held or enjoyed by the said corporations first named in this section by virtue of any gift, grant, bequest, or demise, or otherwise howsoever, then the said corporation hereby created is hereby authorized to accept and receive the assignment, transfer, conveyance, and delivery aforesaid, and shall be and is hereby declared to be the legal successor of the said trustees of the Board of Domestic Missions of the General Assembly of the Presbyterian Church in the
37 United States of America, and shall have, hold, use, and enjoy all the corporate powers, franchises, and privileges of the said corporation last named, and all the property, estates, and rights which may be so assigned, transferred, conveyed, and delivered in the same manner and to the same extent as the said corporation last named might have done, and shall be entitled to receive, sue for, and recover all legacies, devises, bequests, and property which have heretofore been or may hereafter be made or given to the said corporations last named: Provided, however, and it is hereby expressly declared, That the said corporation created by this act shall receive and hold the said property, estates, and rights upon the same trusts and for the same uses and purposes only as the same are or otherwise would be held by the said trustees of the Board of Domestic Missions of the General Assembly of the Presbyterian Church in the United States of America, heretofore created by virtue of the laws of the State of Pennsylvania.

And it is hereby further provided and declared that all grants, conveyances, devises, and bequests which, after the several
38 assignments, transfers, and conveyances heretofore authorized to be made to the corporation created by this act shall have been made and completed as hereinbefore directed, shall be made or which shall purport to be made to the Presbyterian Committee of Home Missions, or to the trustees of the Board of Domestic Missions of the General Assembly of the Presbyterian Church hereinbefore named, shall be deemed and taken to be made to the corporation hereby created with the same effect as if made to such new corporation hereby created.

§ 7. This act shall take effect immediately.

STATE OF NEW YORK, *ss:*

OFFICE OF THE SECRETARY OF STATE.

I have compared the preceeding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

Given under my hand and the seal of office of the secretary of state, at the city of Albany, this 11th day of September, in the year one thousand eight hundred and eighty-five.

[SEAL.] JOSEPH B. CARR,
Secretary of State.

(Indorsed:) Filed September 17, 1886. J. A. Jones, clerk.

39 Then afterwards, to wit, on the first day of October of the year last aforesaid came again said complainant, by his solicitors, and filed in the clerk's office of said court his replication to the several answers herein, which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, }
Southern District of Illinois, } *ss:*

In the Circuit Court. In Chancery.

ROBERT GILMER *vs.* WILLIAM W. STONE *et al.*

The replication of Robert Gilmer to the answers of William W. Stone, Joseph M. Walker, the Board of Home Missions of the Presbyterian Church, and the Board of Foreign Missions of the Presbyterian Church, defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said several answers, for replication thereunto says that he will aver and prove said bill to be true, certain, and sufficient in law to be answered unto, and that said several answers of the several defendants are uncertain, untrue, and insufficient to be replied
40 unto by this repliant without this, that any other matter or thing whatsoever in the said several answers contained material in law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

BRADLEY AND BRADLEY,
Sol's for Pl'ff.

(Indorsed:) Filed October 1, 1885. J. A. Jones, clerk.

Afterwards, to wit, on said first day of October, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order of Reference to to *Take Testimony.*

ROBERT GILMER
v.
WILLIAM W. STONE *et al.* } In Chancery.

On motion of complainant, by Messrs. Bradley and Bradley, his solicitors, this cause is referred to the master in chancery of this court to take and report any testimony which may be produced before him.

41 *Testimony Taken October 1st, 1885, before Bluford Wilson, Master in Chancery.*

United States Circuit Court, Southern District of Illinois. In Chancery.

ROBERT GILMER *vs.* WILLIAM W. STONE *et al.*

Testimony of R. M. L. BRADEN, sworn.

Direct by Mr. BROWN:

Q. Your name, occupation, and residence?
A. I am a minister.
Q. Of what church?
A. Presbyterian Church, located at Greenview, Illinois.
Q. Are you acquainted with the parties to this suit—Robert Gilmer, William W. Stone, and Mr. Walker?
Ans. Yes, sir.
Q. Did you know Robert Gilmer, the decedent, during his lifetime?
Ans. I did, sir.
Q. Please state when you became acquainted with him, and where, and all the facts without my asking.
Ans. When I first came to take charge of the Irish Grove Church; that was in the spring of '79—first of May, '79.

Q. How long were you pastor of the church of which he
42 was a member—you say he was a member of that church?
Ans. Five years, beginning with the first of May, 1879.

Q. Please state whether Mr. Gilmer was a member of the church during your pastorate, and, if so, in what capacity.
Ans. Mr. Gilmer was not only a member of the church, but an elder in the church, and was always punctual in those relations, as an elder and as a member—member of the session.
Q. What was the custom of the church in taking up collections, and what board were those collections taken up for?
Ans. The church, during my pastorate, was accustomed to taking up collections for all the boards of the church.
Q. Will you name them, if you can?
Ans. Possibly I can give them all; there are nine.
Q. You can refresh your recollection by the book there, if you want to.
Ans. Board of Foreign Missions first; Sustentation—which is a

department of Home Missions, Publication, Church Erection, Ministerial Relief, Education, Home Missions, and Freedmen.

Q. And Foreign Missions?

Ans. Yes, sir; I named that and also the Board of Aid for Colleges and Academies; we take up one collection for that—we were accustomed to take up collections for all these boards once every year; these collections were announced the Sabbath previous
43 to their being taken and then announced at the time when being taken.

Q. How was the collection for the Board of Home and Foreign Missions announced?

Ans. Uniformly by name, as you have just designated.

Mr. L. H. BRADLEY: Note our objections to all these questions with reference to the mode of taking up collections.

Judge EDWARDS: It is all understood to be taken subject to exceptions.

Mr. BRADLEY: Very well; in that case I need not enter special objections at each question.

Q. You say it was announced——

Ans. The Sabbath previous. For instance, when we took a collection for the Board of Home Missions I uniformly announced that we should take a collection for the Board of Home Missions on next Sabbath, and then on Sabbath morning I would announce, as previously stated, that we would now proceed to take the collection for the Board of Home Missions, and possibly I might urge the importance of it in that connection.

Q. Now state whether that is the same in the case of Foreign Missions.

Ans. In taking a collection for the Board of Foreign Missions I announced, the Sabbath previous, that we would take a collection for the Board of Foreign Missions on the following Sabbath,
44 and then, on Sabbath morning, before taking the collection—just before taking—I would announce that we would proceed to take the collection announced on the previous Sabbath, and the collection was then taken. I don't know, but I might say this: I don't know that I ever announced it differently than simply as the Board of Home Missions or the Board of Foreign Missions.

Q. In other words, you never announced that it was Home Missions in the Presbyterian Church of the United States or Foreign Missions in the Presbyterian Church of the United States?

Ans. No, sir; that was too long.

Q. What was done with the collection so taken up during your pastorate?

Ans. Those collections were entrusted to me, as treasurer, by the session of the church.

Q. Of which Mr. Gilmer was a member?

Ans. Mr. Gilmer was a member of the session.

Q. Collections taken up for the Board of Home Missions and the Board of Foreign Missions during your pastorate were sent where?

Ans. They were sent by me to those boards respectively.

Q. What boards?

Ans. To the Board of Home Missions, twenty-three Centre street, New York.

Q. Of what?

Ans. Presbyterian Church of the United States of America; and the collection for the foreign board was sent to the Board of
45 Foreign Missions, twenty-three Centre street, New York, same address.

Q. Did you get receipts from those boards?

Ans. Uniformly.

Q. Please state whether or not Mr. Gilmer was a constant contributor to those boards during your pastorate.

Ans. He was, sir; uniformly; I have seen him contribute a great many times to those particular boards; he was always present when his health permitted.

Q. Did you make a report to the session from time to time of your payment of these contributions to the church?

Ans. The session did not require me to do that, any further than this—at the end of the year I made a report.

Q. That's it, as to how you disposed of the funds.

Ans. Yes, sir; and that was done publicly, not only before the session, but before the church.

Q. Do you know whether Mr. Gilmer was present at any time when the reports were made?

Ans. Yes, sir.

Q. Please state whether you ever had any conversation with Mr. Gilmer with reference to the two boards mentioned of the Presbyterian church, and, if so, state as near as you can what that conversation was.

Ans. We have frequently talked with reference to those two boards especially; he was interested in all the boards of the church, but especially in those two boards, Home and Foreign
46 Missions, and always expressed himself favorably to them, and always desired his means should be contributed in that direction as far as he was able; this, in substance, so far as I can recollect, was his uniform expression.

Cross-examination by Mr. BRADLEY:

Q. I understand you to say that you became acquainted with the deceased, Robert Gilmer, about 1879?

Ans. Yes, sir.

Q. Had you known him before that time?

Ans. No, sir.

Q. At that time I suppose you came into that neighborhood as pastor of the church, at this grove you speak of?

Ans. Yes, sir.

Q. He was a member of this society at that point?

Ans. Yes, sir.

Q. You speak of taking up a number of these collections as pastor of this society or church, and among others you name a collection taken up for the Board of Home Missions; will you please tell us

what kind of a society that was, whether it was a religious society or not?

Ans. It was understood to be the Board of Home Missions of the Presbyterian Church in the United States. We used the term because it was understood by all the church and the membership of the church to be the Board of Home Missions of the Presbyterian Church of the United States.

Q. They were located where?

Ans. In New York city.

47 Q. An incorporated society?

Ans. Yes, sir; for the disbursement of means belonging to that department.

Mr. BROWN: Both societies are incorporated by the laws of New York.

Q. Was that Board of Home Missions of which you speak, that had its office in New York, a religious society?

Ans. Yes, sir; in connection with the Presbyterian Church.

Q. This Board of Foreign Missions, you speak of, I suppose, was also a religious society?

Ans. Yes, sir.

Q. And was one of the adjuncts of the Presbyterian Church for the advancement of Christianity and religious teaching?

Ans. Yes, sir.

Q. You say you remember distinctly of Mr. Gilmer being present when you made one or more of these announcements as to your transmission of funds received for the Board of Home and for the Board of Foreign Missions; can you state that you remember any particular time when he was there and heard this announcement, or are you stating simply your general remembrance?

Ans. Put that question again, if you please.

Q. You state that he was present many times when you announced to the church what you had done with the collections received for the Boards of Home and Foreign Missions—announcements made at the end of the year; I understand you reported once a year?

Ans. Yes, sir.

48 Q. Now I ask you can you state any particular time when he was present and heard such an announcement?

[A.] I don't know that I can specify any particular time, but it is distinctly my recollection that he was uniformly present when those announcements were made. I always made them at the close of my year in my relations with the church, which was just preceding our spring meeting of the Presbytery and that was about the first Sabbath in April; those reports were uniformly made, and, whilst I could not give one date seperate and apart from the others for the five years I was connected with the church, yet it was my candid impression he was present.

Q. I presume your recollection of his being present was based upon the fact——

Ans. That he was uniformly present.

Q. Usually present?

Ans. Yes, sir.

Q. Do you know what donations he made to other church societies?

Ans. Well, sir, it is my conviction that he gave to no other church society; he was a regular contributor to the Bible society.

Q. That was not confined to the Presbyterian Church?

Ans. No, sir.

Q. He was rather a liberal-minded citizen, wasn't he?

A. Yes, sir.

Q. Open-handed and supported his church well?

Ans. Yes, sir.

49 Q. Took a particular interest in his particular choice, the Presbyterian Church?

Ans. Yes, sir.

Q. But he was liberal to other societies outside, wasn't he?

Ans. Well, I have no knowledge of a specific contribution he gave to any but the Bible society.

Q. And that was not confined to your church?

Ans. No, sir.

Q. Where did Robert Gilmer reside in '79?

Ans. He was residing at a locality known as Irish Grove, in Menard county.

Mr. BROWN: When did he die?

Ans. This is '85; two years ago this coming December.

Mr. BROWN: From '79 up to that time of his death he was a member of this Irish Grove church of which you were pastor?

Ans. Yes, sir.

Mr. BROWN: I was thinking he died before you left?

Ans. He did die before I left.

Q. You say you know him to be uniformly a contributor to these missions and other boards of the church during his lifetime, and that you had received or knew of his making contributions; in what way did you know that—by the payment of money or property, or how?

Ans. By contributions through the channels of the church, and I have seen him put contributions into the box; I have noticed him carefully and seen him do that again and again.

Q. That is what you mean to speak of here—donations in the church?

Ans. Yes, sir.

50 Q. Taking up cash collections through the congregation?

Ans. Yes, sir.

Q. You don't know of his making any donations of real estate or property other than money or other than in the manner you have described?

Ans. No, sir.

Testimony of James P. Stone.

Testimony of JAMES P. STONE, sworn.

Direct by Mr. BROWN:

Q. What is your residence?

Ans. I live at Irish Grove, Menard county.

Q. You are not one of the executors?

Ans. No, sir.

Q. You were acquainted in his lifetime with Robert Gilmer?

Ans. Yes, sir.

Q. How long have you known him?

Ans. Ever since I was large enough to know any one; he lived about a quarter — from me; about the same age; always lived there.

Q. Please state, if you know, how long Mr. Gilmer has been connected with the Presbyterian Church there.

Ans. Well, he united with the Presbyterian Church in March, '59, at the same time I did.

Q. Will you state whether he was, during that time, a regular and consistent member of the church up to the time of his death?

Ans. He was.

Q. In what capacity did he serve; was he or not an officer of the church? And if so, state how long and whether you had any connection with him.

51 Ans. He was elected an elder in '76; I was an elder previous to that and I remember his coming into the session.

Q. What course did the church pursue and the session in reference to the different boards of the Presbyterian Church?

Ans. Well, we were in the habit of taking up the collections, as the assembly recom-emded, once a year for the different boards; I believe the session rejected sustentation, decided not to take up a collection for that—that is, in our meeting.

Q. Please state how long prior to his death were these contributions taken up for the different boards.

Ans. Well, I should say twelve years previous to his death they were regular.

Q. Under what conditions were they taken; under whose directions were these collections taken?

Ans. The sessions decided that we should take up collections.

Q. Any particular board?

Ans. Yes, sir; for that board.

Q. Please state what was announced from the pulpit. You say these collections were taken up each Sabbath for particular boards, and was it announced prior to the Sabbath?

Ans. Yes, sir; it was the custom to announce that a week previous, and also at the time it was taken up.

Q. Please state whether or not the session directed a collection to be taken up for the Board of Home and Foreign Missions of the Presbyterian Church.

52 Ans. Yes, sir; directed collections to be taken up for the home board and foreign.

Q. Was that collection taken up as suggested by the general assembly?

Ans. Yes, sir.

Q. Do you know whether Robert Gilmer was a contributor to those boards?

Ans. Yes, sir; I have seen him contribute frequently.

Q. Did he to your knowledge have any choice as to the boards; did you ever hear him express an opinion as to the boards?

Ans. Well, I have the impression that he was rather partial to the home and foreign board; he said he would not give to one board at all, and that was the Board of Education; didn't like to give to that.

Q. How was the announcements made with reference to those two boards from the pulpit?

Ans. Announced to take up collections from the Home Missionary Board or the Foreign Missionary Board.

Q. Was it announced as the Board of Home or Foreign Missions of the Presbyterian Church in the United States of America?

Ans. No, sir; I don't think I ever heard that announcement.

Q. State whether or not it was announced in the congregation as the Board of Home or Foreign Missions.

Ans. Yes, sir; that is the way it is known, I think, generally, to the congregation.

53 Q. Was Mr. Gilmer uniformly in attendance at meetings of the session?

Ans. Yes, sir; he attended quite as well as any.

Cross-examination by Mr. BRADLEY:

Q. These two boards that you named specially were the Board of Home Missions of the Presbyterian Church and the Board of Foreign Missions of the Presbyterian Church, and you knew for what purpose they were organized and sustained, I suppose?

Ans. Yes, sir.

Q. They were, I suppose, religious incorporations?

Ans. Yes, sir.

Q. For the advancement of the cause of Christianity?

Ans. Yes, sir.

Q. Is it not true that other churches have like corporations by the same name?

Ans. I suppose they have; I wasn't aware of it.

Q. You have heard of it?

Ans. I think I have in the last year or two.

Q. There are a number of churches of the same name, except that it would be the Board of Home Missions of the Methodist or Baptist Church, and most of the othodox churches have these missions, have they not?

Ans. I think they have.

Q. When you speak of contributions you mean such contributions as would be made in a church assembly or meeting?

Ans. Yes, sir.

54 Q. Ever know him to make any contributions outside of these church contributions?

Ans. No, sir; don't believe I do.

Q. I suppose he was liberal to the church during his lifetime?

Ans. Yes, sir.

Q. Do you know of his contributing to other religious societies outside of the Presbyterian Church?

Ans. I don't; except agents who came around in the neighborhood every year for subscriptions to the Bible cause.

Mr. BROWN:

Q. And that was not a board of the church?

Ans. No, sir.

Testimony of W. W. Stone.

Testimony of WILLIAM W. STONE, sworn.

Direct by Mr. BROWN:

Q. Where do you reside?

Ans. Irish Grove.

Q. How long have you resided there?

Ans. All my life; born and raised there.

Q. What is your age?

Ans. Fifty-three years old.

Q. Were you acquainted with Robert Gilmer during his lifetime?

Ans. Yes, sir.

Q. How long did you know him; when did your acquaintance commence and when did it cease?

Ans. Commenced as soon as I was old enough to know anything and ceased with his death; I reside- within a few miles of him.

Q. Were you connected with him in church work?

Ans. Yes, sir.

Q. How?

55 [Ans.] I was a member of the Irish Grove Presbyterian Church.

Q. Of which he was a member?

Ans. Yes, sir.

Q. A consistent member?

Ans. Yes, sir; during the whole time I was a member.

Q. How long?

Ans. I don't know; lived with me ten years previous to that.

Q. During that time a member of the church?

Ans. Yes, sir.

Q. And a member of the session of the church?

Ans. Yes, sir.

Mr. BRADLEY: It is understood that all this testimony of all these witnesses be taken subject to exception.

Q. Certainly. Do you know what his habits were as to contributions during his membership?

Ans. All I know is that he was always contributing to them.

Q. To what?

Ans. To the boards—collections taken up in our church—talked a good deal about it.

Q. Have you ever talked with him in relation to any of the

boards of the church? And, if so, state as near as you can what that conversation was.

Ans. I forget what that was; but it was favorable to all these boards contributed to in our church.

Q. Did you ever hear him speak in reference to the Board of Home and Foreign Missions?

Ans. Yes, sir.

56 Q. Please state whether he was more deeply interested in that than in other boards.

Ans. He seemed to be; some of the other boards he didn't hardly think worthy to be contributed to much.

Q. You [are] one of the executors of his will?

Ans. Yes, sir.

Cross-examination by Mr. BRADLEY:

Q. How old a man was Robert Gilmer at the time of his death?

Ans. In his forty-fifth year, I think.

Q. He lived in that neighborhood?

Ans. Resided right there in the neighborhood.

Q. Left no family?

Ans. No, sir.

Q. These Boards of Home and Foreign Missions—you understand them to be religious corporations?

Ans. Yes, sir.

Q. Incorporations for religious purposes and supported by your church?

Ans. Yes, sir.

Mr. BROWN:

Q. Please state how they were known in the church.

Ans. Just known as the Board of Home Missions and the Board of Foreign Missions; all the way I ever heard them announced.

Q. I don't remember what that bill recites as to whether this is real property or not.

Mr. BROWN: My recollection is it is—don't think that is denied.

Q. Well, it is admitted.

Mr. BROWN: Yes; I think I state he left personal and real——

57 Q. Have you sufficient recollection of the fact, so that you can give a clear statement of what estate—what amount of personal and real estate?

Ans. I haven't any of the papers with me.

Mr. BROWN: I don't think there will be any dispute on that point.

Ans. I think the estate was estimated at about seventeen thousand dollars.

Q. That would be including both?

Ans. Yes, sir.

Mr. BROWN: How much personalty?

Ans. About forty-two hundred dollars.

Q. The balance then of the donation was of real estate?

Ans. Yes, sir; land.

Q. How many acres of land were there?

Ans. Something over three hundred acres.

Q. Now, in the management of that estate and in satisfying the legalities of this will outside of the devise to go to the Board of Home and Board of Foreign Missions, did you exhaust all the personal property?

Ans. Yes, sir; and there wasn't enough to do it—enough to pay the debts, six or seven thousand [dollars] of indebtedness.

Q. To satisfy the indebtedness entirely exhausted the personal estate?

Ans. Yes, sir; and that didn't satisfy them then.

Q. These lands located in Menard county?

Ans. Yes, sir; near Irish Grove.

58 Q. You are not prepared to give a particular description?

Ans. No, sir; I can say a hundred and sixty acres of prairie land.

Q. Can you state what section, *and*, etc.?

Ans. No, sir.

Q. Well, then, we won't bother with that at all unless you can readily state it.

Testimony of Wm. C. Kincaid.

Testimony of WILLIAM C. KINCAID, sworn.

Direct by Mr. BROWN:

Q. What is your age, residence, and occupation?

Ans. I was seventy-two last February; my residence is Irish Grove, and my occupation a farmer.

Q. Were you acquainted with Robert Gilmer during his lifetime?

Ans. Yes, sir.

Q. State how long you have known him.

Ans. I have lived there thirty years, and have known him, I think, about all the time I have been in the neighborhood.

Q. Up to the time of his death?

Ans. Yes, sir.

Q. Were you connected with him in church work?

Ans. Yes, sir.

Q. Please state what church he connected himself with, and how long he was a member to the best of your recollection.

Ans. He was a member of the Irish Grove Presbyterian Church, and had been a member, I suppose, twenty years.

Q. What was his habit as to contributions to that church?

[Ans.] He generally—universally, I might say—contributed to the collections taken in the church.

59 Q. What were those collections taken for?

Ans. The Home Missionary Board and the Foreign Missionary Board, Freedman's Bureau, and so forth.

Q. Those that are mentioned in the records of the Presbyterian Church?

Ans. Yes, sir; collectionstaken up on the days that the sessions directed.

Q. Was Gilmer a member of the session?

Ans. Yes, sir.

Q. And you were connected with him—acted with him?

Ans. Yes, sir.

Q. What action did the session take in regard to these collections?

Ans. If I recollect right, the session recommended that we take collections for all but one or two of the boards; one of the boards Mr. Gilmer objected to taking collections for.

Q. What was that?

Ans. The Board of Education.

Q. Did the session adopt all other boards except the Board of Education and Susten-ation; is that it?

A voice: Sustentation.

Ans. I think so.

Q. Was he a contributor uniformly to the Boards of Home and Foreign Missions?

Ans. He was.

Q. How were they known in the church?

Ans. It was announced the Sabbath before the collection was to be taken on that the next Sabbath we would take up a collection for the home missions.

Q. Was it given in the words you mentioned?

Ans. Yes, sir.

Q. How about foreign missions?

Ans. Board of Foreign Missions.

60 Q. It was not announced, then, that it was for the Boards of Home and Foreign Missions of the Church of the United [States]?

Ans. No, sir.

Q. Then the Board of Home Missions and the Board of Foreign Missions in the Presbyterian Church of the United States were known simply as the Board of Home——

Ans. And Foreign Missions.

Q. You say you know he contributed to those boards you have named?

Ans. Yes, sir.

Q. Did you ever have any talk with him in reference to the board?

Ans. No, sir.

Q. Were the collections taken up in the church for those boards uniformly sent to the boards of the Presbyterian Church in the United States?

Ans. Yes, sir; and receipts returned.

Q. Was the session acquainted with the fact—was the session of your church cognizant of the fact—that they were going to the boards of the Presbyterian Church?

Ans. That was the understanding—that they were contributing to those boards in the Presbyterian Church.

Mr. BRADLEY: You understood that these two Boards of Home and Foreign Missions of the Presbyterian Church were incorporated socities for religious purposes, didn't you?

Ans. Yes, sir; that was the term by which the societies were known.

61 Mr. BRADEN recalled:

Mr. BRADLEY: Did I ask you with reference to similar boards in other churches?

Ans. Yes, sir.

Mr. BROWN: These various boards for which you took up collections were under the charge and control of the Presbyterian Church proper?

Ans. Yes, sir.

Mr. BROWN: It is agreed that there are other religious organizations, as for instance, the Baptist, Methodist, and Episcopal which have boards of home and foreign missions appertaining to those particular church organizations.

(Indorsed:) Filed January 8, 1886. J. A. Jones, clerk.

Afterwards, to wit, on the fifteenth day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and eighty-six, the following further proceedings were had in said court in said cause and entered of record, to wit:

62 *Decree Dismissing Bill of Complaint.*

ROBERT GILMER *v.* WILLIAM W. STONE and JOSEPH M. WALKER, Executors of Robert Gilmer, Deceased; the Board of Foreign Missions of the Presbyterian Church in the United States of America, and the Board of Home Missions of the Presbyterian Church in the United States of America.	In Chancery.

And now, on this 15th day of January, 1886, come the parties, by their counsel, and submit this cause to the court for hearing on the pleadings and proofs; and the court having heard and considered the same as well as the arguments of counsel thereon, and being sufficiently advised in the premises, doth order and decree that the complainant's bill be dismissed with costs, to be taxed.

Then afterwards, to wit, on the twenty-fifth day of January, in the year last aforesaid, came again said complainant, by his solicitors, and filed in the clerk's office of said court his petition for rehearing, which said petition is in the words and figures following, to wit:

63 *Petition for Rehearing.*

UNITED STATES OF AMERICA, *Southern District of Illinois:*

In the Circuit Court.

In the suit of—

ROBERT GILMER *vs.* W. W. STONE *et als.*

Bill in equity to construe a will.

To the honorable judges of said court:

Your petitioner, Robert Gilmer, the complainant in the above-entitled cause, respectfully represents unto your honors that he is not satisfied that full and exact justice has been done him in the former hearing and decision of this cause by this honorable court, and asks that a rehearing thereof may be granted him therein, and for cause assigns the following:

1st. The complainant is not satisfied that the 42nd sec. of the act of the Legislature of the State of Illinois of 1872 has been sufficiently presented to this court, and therefore desire a further opportunity for argument thereon.

2nd. The decision of the court does not give the force to the said 42nd section of act of 1872 that complainant believes it ought.

3rd. The court has given undue force to the decision of the Supreme Court of the U. S. *of* the Younts case, reported in the 11th Otto, in the decision of this case.

64 4th. The question of the ambiguity of the clause of the will in controversy in this case has not received proper consideration in the former argument and decision of this court.

5th. The decision of the court herein is in many other respects, as complainant believes, erroneous.

Respectfully submitted.

BRADLEY AND BRADLEY,
Solicitors for Complainant.

(Indorsed:) Filed January 25, 1886. J. A. Jones, clerk.

Then afterwards, to wit, on the twenty-sixth day of April, in the January term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Dismissing Petition for Rehearing & Allowing Appeal.

ROBERT GILMER
v. } In Chancery.
WILLIAM W. STONE, *et al.*

And now on, this 26th day of April, 1886, come again the parties, by their counsel, and the complainant dismisses his petition for a rehearing; and it appearing to the court that the value of the property in controversy exceeds the sum of five thousand

65 dollars, it is therefore ordered by the court, on motion of the complainant, that he be allowed an appeal to the Supreme Court of the United States from the decree entered herein dismiss-

ing the bill on his entering into bond to the defendants in the penalty of two hundred and fifty dollars, conditioned as the law directs, to be approved by the court within sixty days from this date; and the parties having filed a stipulation in writing submitting the appeal for hearing at the next October term of the Supreme Court under the twentieth rule of said court, it is ordered by this court that the defendants retain the control of the subject-matter of the suit until said appeal is disposed of.

Then afterwards, to wit, on the twenty-ninth day of May, in the year last aforesaid, came again the complainant, by his solicitors, and filed in the clerk's office of said court his bond on appeal herein, which said bond is in the words and figures following, to wit:

66 *Bond on Appeal.*

Supreme Court of the United States. In Chancery.

ROBERT GILMER

vs.

WILLIAM W. STONE and JOSEPH M. WALKER, Executors, etc.

Know all men by these presents that we, Robert Gilmer, Robert C. Gilmer, and J. G. Turk, are held and firmly bound unto William W. Stone and Joseph M. Walker in the sum of two hundred and fifty ($250) dollars, to be paid to the said William W. Stone and Joseph M. Walker; — payment, well and truly to be made, we bind ourselves, jointly and severally, and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this 13th day of May, 1886.

Whereas the above-named Robert Gilmer has perfected an appeal to the Supreme Court of the United States to reverse a decree rendered in the above-entitled cause by the circuit court of the United States for the southern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named Robert Gilmer shall prosecute his appeal to effect and answer all damages and costs if he shall fail to make
67 good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

ROBERT GILMER. [SEAL.]
ROBERT C. GILMER. [SEAL.]
J. G. TURK. [SEAL.]

Executed in the presence of—
R. E. LEWIS.

STATE OF MISSOURI, } ss:
Henry County, }

Robert Gilmer, security on the foregoing bond, being duly sworn on his oath says that he is worth over and above all liabilities and exemptions the sum of ten hundred dollars.

ROBERT GILMER.

Subscribed and sworn to before me this 13th day of May, A. D. 1886.

[NOTARIAL SEAL.] WM. H. AVERY,
Notary Public.

STATE OF MISSOURI, } ss:
Henry County, }

Robert C. Gilmer, security on the foregoing bond, being duly sworn, on his oath says that he is worth over and above all his liabilities and exemptions the sum of one thousand dollars.

ROBERT C. GILMER.

Subscribed and sworn to before me this 13th day of May, A. D. 1886.

[NOTARIAL SEAL.] WM. H. AVERY,
Notary Public.

68 STATE OF MISSOURI, } ss:
Henry County, }

J. G. Turk, security on the foregoing bond, being duly sworn, on his oath says that he is worth over and above all his indebtedness and liabilities and exemptions the sum of six thousand dollars.

J. G. TURK.

Subscribed and sworn to before me this May 26th, A. D. 1886.

[NOTARIAL SEAL.] CHARLES A. CALVIRD,
Notary Public.

Com. expires Feb. 16th, 1889.

(Indorsed:) Approved May 29th, 1886. S. H. Treat, district judge.

(Also indorsed:) Filed May 29, 1886. J. A. Jones, clerk.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

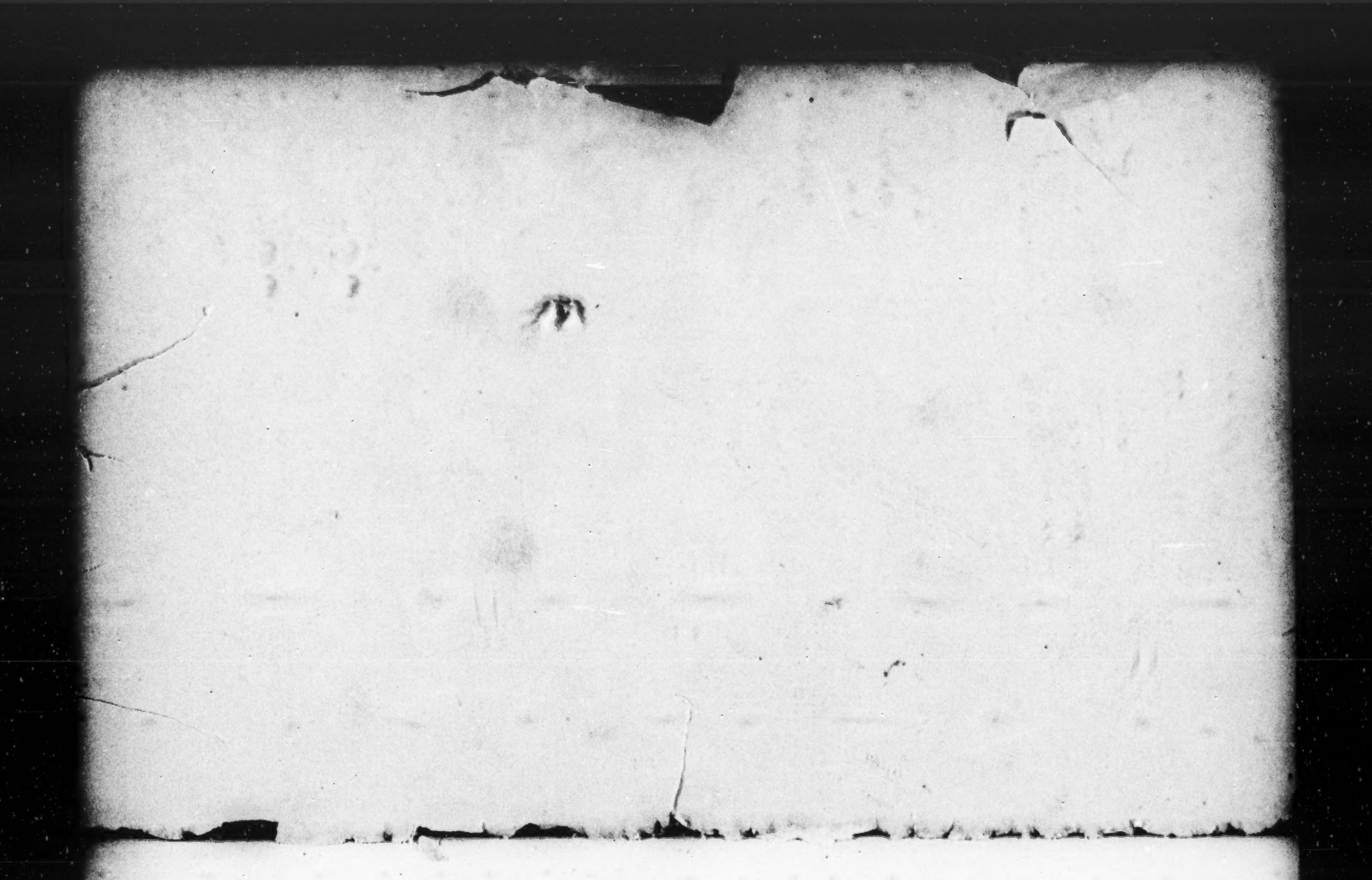
I, J. A. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of all the papers filed and proceedings thereon had in a certain cause wherein Robert Gilmer is complainant, and William W. Stone and Joseph M. Walker, executors of Robert Gilmer, deceased; the Board of Foreign
69 Missions of the Presbyterian Church in the United States of America, and the Board of Home Missions of the Presbyterian Church in the United States of America are defendants, as truly and completely as the same appear of file and record in my said office.

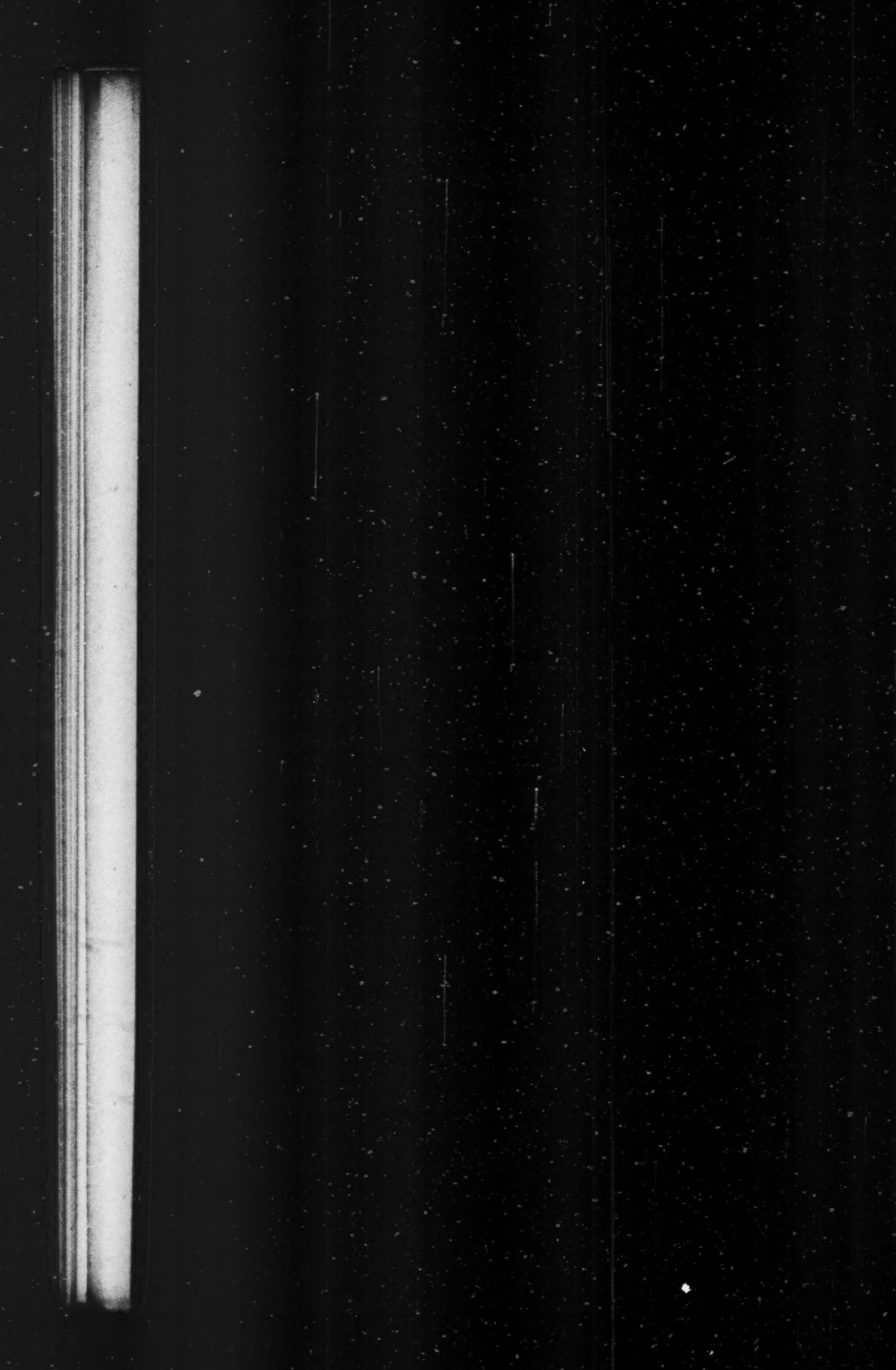
In witness whereof I have hereunto set my hand and seal of said court, at Springfield, in said district, this eleventh day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the one hundred and eleventh year.

[The Seal of the Circuit Court of the United States for the South'n Dist. Ill.]

J. A. JONES, *Clerk.*

Endorsed on cover: S. Illinois C. C. U. S. No. 1168. Robert Gilmer, appellant, *vs.* William W. Stone & Joseph M. Walker, executors of Robert Gilmer, deceased; The Board of Foreign Missions of the Presbyterian Church in the United States of America, and The Board of Home Missions of the Presbyterian Church in the United States of America. Filed October 15, 1886.





IN THE

SUPREME COURT,

OF THE

United States of America, Washington D. C.

OCTOBER TERM, 1886.

ROBERT GILMER,

vs.

WM. W. STONE, *et als., Ex'rs, Etc.*

Bill in Equity, to construe Will.

BRIEF AND ARGUMENT FOR APPELLANT.

Complainant Robert Gilmer, the only surviving heir of Robert Gilmer, deceased, seeks by his bill in this suit to have construed the *residuary clause* in the will of his uncle, Robert Gilmer, deceased. The clause reads:

"11th. I also, after paying all debts and claims against my estate, bequeath and devise the remainder of my estate to be equally divided between the *Board of Foreign* and the *Board of Home Missions*."

The contention of complainant is essentially threefold, namely:

1st. The devise is void for uncertainty; 1st as to the person of the donee, and 2d, as to the purpose of the gift.

2d. The devise is void because no specific use is declared.

3d. The devise being of real estate, the defendants, the "Board of Home and the Board of Foreign Missions, of the Presbyterian Church," being foreign corporations and religions societies or societies organized for religious purposes, they cannot take in Illinois, under the statutes of Illinois, beyond ten acres, each of real estate, in Illinois, and the devise being of more than 300 acres of land jointly is void and must fail.

ASSIGNMENT OF ERRORS.

1st. The decision of the court does not give due force to the 42 Section act of 1872.

2d. The court has given undue force to the decision of the Supreme court of the U. S., in the Younts case reported in the 11th of Otto., in the decision of this case.

3rd. The question of the ambiguity of the clause of the will in contraversy in this case has not secured proper consideration is the decision of this case.

4th. The decision of the court is in many other respects erroneous as appellant believes.

We wish to have the court bear in mind in applying the law to the controversies in hand, that, 1st, it is shown by the acts of incorporation, copies of which are attached to the answers in the case, that the "Board of Home" and the "Board of Foreign Missions" of the "Presbyterian church" defendants, are declared to be for religious purposes and are therefore not *charitable* bodies, but religious societies.

See Heath v. Chapman, 2 *Drew* 417.

The testimony in the case also shows that these corporations are "religious societies" purely, and: 2d, that the property embraced in this devise to these corporations (if it be determined it is to them) is solely real estate. The corporations are created such by the laws of New York, while the estate devised is in the State of Illinois.

We call your attention next to our first point of objection to this residuary clause, namely: As to the uncertainty thereof, which uncertainty we say consists first as to the person of the donee, and, 2d, as to the purpose or declared use of the gift.

Jarmin, in his work on wills, says: "With reference to the matter of uncertainty and indefiniteness, it may be remarked in general that a stricter rule is observed in the American than in the English courts."

Jarmin on Wills, vol. I., p. 403 (*note* 3).

"Uncertainty and indefiniteness may relate either to the person of the donee or to the character and purpose of the gift and where the gift is in form of a trust, either to the person of the trustee or of the beneficiary.

Jarmin on Wills, vol. I., page 404 *and note.*
Sury, Eq. Jur., Sec. 1158.
Perry on Trusts, Sec. 713.

The language of the residuary clause is: "I also, after paying all debts and claims against my estate, bequeath and devise the remainder of my estate to be equally divided between the Board of Foreign and the Board of Home Missions."

It being by stipulation in this record that each church society, or at least a great number of them, have boards of these same designation, that is, home and foreign missions of the particular church, and no particular church being herein designated, the language at once becomes uncertain because it is not made certain what boards of missions are intended by the language employed, and without some extraneous light being thrown on the intent, any church society having such boards would be as much and as certainly embraced in this language as the *defendant church.*

But the Board of Home and the Board of Foreign Missions of the Presbyterian Church, defendants, say they are the boards intended as the beneficiaries, because, they say, the deceased was a member of their church and was in the habit of contributing to these boards, etc.

If the rule laid down by the Supreme Court of Massachusetts in the case of Hinckley, executor, v. Thacher, decided June 22, 1885, reported in Vol. I, No. 3, page 176 Eastern reports, be followed in the case now before the court as to the question of the identity of the person of the donee, alone then, there is still a wide difference between the clause of the will in that case and the clause herein. In that case the clause was: "I do also will and desire that the residue of my property, if any, after paying my funeral expenses and just debts, as well as before named bequests, be given to the authorized agents of the Home and Foreign Missionary societies, *to aid in propogating the holy religion of Jesus Christ.*

It will be seen that an express use is declared or purpose of the gift that is, "to aid in propogating the holy religion of Jesus Christ." In the clause before the court, no use is expressed nor any purpose designated, and the devise is not made, as in the Massachusetts case, to the trustees of the society, or authorized agents, but reads, "devise the remainder of my estate to be equally divided between the Board of Foreign and Board of Home Missions," and here stops," leaving this devise, if held operative, to these corporations to appropriate in any manner or for any purpose they choose, so we say the Massachusetts case is an authority only on one proposition, and that is as to the determining from oral testimony which particular board or boards are intended and only this; in no other phase of this case is that case an authority in point.

In the case referred to by defendants' counsel, decided by the Supreme Court of Massachussetts, we say that the law stated is in direct conflict with the full line of authorities as laid down by the courts elsewhere, both supreme and inferior, and cannot be sustained by text book law, and is an infraction of the established rules of law governing the construction of wills. The Supreme Court of the United States, in the case of Wilkins v. Allen, 18 Howard, p. 385, lays down the propositions of law which should govern in the construction of wills. "If the intention of the testator is doubtful the rule of law must take place, and so if the court cannot find words in the will sufficient to carry a fee, though they should be

satisfied beyond the possibility of a doubt as to what the *intention* of the party was, they must adhere to the rule of law." "This decision was made in 1811, and the principles then laid down have since been adhered to with uncommon care and strictness." The intent of the testator cannot be inferred from any extrinsic circumstances or mere conjecture, but must be determined from the language used in the will, and parol evidence will not be admitted to prove what was intended by the testator, and where the intent is not expressed sufficiently clear in the language used by the testator to give expression to the meaning intended, the court will construe the ambiguous clause as void, for the reason that the heir takes by law, and will not be disinherited and the estate given to another unless the party is designated in the devise with reasonable certainty, and the court is not permitted to indulge in conjecture and speculation as to the party intended by the testator." We insist that in this case, from the language used in the clause of the will now under consideration by this court, that the Board of Home and the Board of Foreign Missions, in and of itself, is meaningless as to any particular board of missions. The evidence discloses the fact that nearly every evangelical church or religious association in this country has a board of home and foreign missions, and how can this court say that the devisor intended by his will to give his estate to the Presbyterian Church, to the exclusion of all other churches, and disinherit the heir, without indulging in conjecture and speculation as to the intent of the testator to convey his estate to the Presby-

terian Board of Home and Foreign Missions. If this is a correct statement of the law governing the construction of ambiguous clauses in a will, then there can be but one conclusion, and that is that the eleventh clause of the will which the court is now asked to construe, is void and meaningless and no estate can pass to the Board of Home and Foreign Missions, by reason of its ambiguity, and the heir must take the estate.

But if this Massachusetts case should be held as authority for showing the identity of the donee, we seriously contend that the clause is still inoperative and void, upon two special grounds as before said: 1st, that the Boards of Home and Foreign Missions are not compotent trustees, and 2d, there is no object or special use to which the gift is to be applied by the donees.

In the case of Owens v. Missionary Society, 14 N. Y., 380, it was held "that the Methodist General American Missionary Society was *not* a *compotent trustee.*

So too, a legacy "to foreign missions and to the poor saints to be applied as my executors may think proper, etc.," was held to be void.

Bridges v. Pleasants, 4 *Ired. Eq.* 26.

See also *Fontain v. Ravenel*, 17 *Howard* (*U. S.*) 369.

Perry on Trusts, *Secs.* 713 *and* 116.

2*d. Story's Equity*, *Secs.* 1183, 979 "*a*" *and* 979 "*b.*"

Wheeler v. Smith, 9 *Howard* 55-79 (*U. S.*)

This doctrine, we think, is ably discussed in view of the State policy of Illinois in case of—

Taylor v. Keep et als, 2d *Bradwell* 368.

See also a well considered case by Supreme Court, U. S., in—

18 *Howard* (*U. S.*) *p.* 385 (*Wilkin et al v. Allen et al*).

We think, upon authority, it may safely be stated as a fixed rule, "that a gift or devise of real estate to a corporation by name alone, where no use or purpose is expressed, is absolutely void and cannot be enforced by any aid to be derived from a court of equity."

Before leaving this branch of the argument we do not wish the court to understand us as consenting to the rule as to "identity of donee" laid down in the Massachusetts case heretofore referred to, as this court is no more bound by that case than by the New York cases herein cited, which, we think, lay down a widely different rule, but we ask for our client that the rule this court shall, after a full examination of authority, think to be the correct one, shall be applied to this case.

We now call the courts attention to the last or 3d of the objections by us insisted upon as defeating, or which renders this devise or bequest void, towit:

That the bequest being of real estate, the defendants, the Boards of Home and Foreign Missions of the State

of New York, being religious foreign corporations, cannot, under the statutes of Illinois, take (if at all) more than 10 acres each of lands by the devise.

It is argued by counsel for the defendant corporations that the case of The American & Foreign Christian Union v. Yount, 11 Otto, p. 352 to 362, opinion by Justice Harlan, is a full discussion and decision of the right of corporations like the defendants' to take by devise real estate in Illinois. Unless we are laboring under grave misapprehensions of the case and the decision of it by the Supreme Court, we think, by the indulgence of the court, in contrasting that case with this, we can show that the precise question we here make has not been passed upon in that case.

The case of Yount's is familiar to this court, having gone from this to the Supreme Court. It involved the validity of a conveyance of lands in Illinois, of the alleged value of $10,000, made to the American and Foreign Christian Union, a corporation created in the year 1861 under the laws of the State of New York, providing for the incorporation there, of benevolent, charitable, scientific and missionary societies.

The declared object of its incorporation was "by missions, colportage, the press and other appropriate agencies to diffuse and promote the principles of religious liberty and a pure evangelical christianity, both at home and abroad, wherever a corrupt christianity exists.

The Younts' were the children and heirs-at-law of the grantor in this conveyance, and seek by their bill to com-

pel a conveyance to them of these lands in dispute. "They broadly claim that, by the settled law of Illinois, a foreign corporation cannot take or hold lands in that State, and that consequently no title passed to the appellant from their ancestor. That is the fundamental proposition in the case, and is the only one which counsel for the appellees, in support of the decree below, has deemed it necessary to discuss with any fullness."

Perhaps we may as well at this point call attention to what we believe to be the essential difference between the Younts case and this one.

In that case the appellant corporation was not denominated a religious society, which, in view of the statutes of Illinois, to which we shall hereafter call attention, is quite important: While the defendant corporations in this case are religious corporations or societies, and being such as we have herein before said their powers are to be determined by determining what powers like religious societies or corporations formed under the laws of Illinois for like purposes are clothed with. (See answers of the defendant corporations to which are attached copies of acts of their incorporation.)

We insist and shall try to hereafter demonstrate and support by authority that the State of Illinois has a settled policy as to the powers of religious corporations, and that such policy prohibits a foreign religious corporation from taking or holding more than 10 acres of land in Illinois.

We think, when closely examined and carefully considered, the decision of Justice Harlan in the Younts' case, fails to observe any distinction between different kinds of foreign corporations as to the policy of Illinois, with respect thereto, and because one class may be found not to be prohibited from taking and holding real property in Illinois without limit, seeks to bring every other other class within the provisions of the same laws. This seems to have been as Justice Harlan says it was the fundamental proposition in the Younts' case, and the only one argued by attorneys for the Younts at any length

It was broadly claimed in that case that by the settled law of Illinois a foreign corporation could not take or hold lands in that state, and that consequently no title passed from their ancestor to the American and Foreign Christian Union.

We cannot give our assent to this broad claim, as we do not think it can be supported by authority. We insist that by the laws of Illinois some foreign corporations may take and hold lands, and others cannot

We now recur to the further consideration of the opinion of Justice Harlan in the Younts case. He says: "The appellant, then having this capacity by its charter, (that is to take and hold the real estate in New York) and not being expressly prohibited from exercising its powers beyond the state which created it, we proceed to enquire whether it was forbidden by the laws of Illinois in force in the year 1870 from taking title by conveyance to real property within the limits of that state for the objects

designated in its charter. For besides the admitted incapacity of a corporation of one state to exercise its powers in another state, except with the assent or permission, expressed or implied, of the latter, it is a principle 'as inevitable as it is fundamental and conservative, that the right to hold land and the mode of acquiring title to land must depend altogether on the local law of the territorial soveriegn.'"

Runyan v. Coster, 14 *Pet.*, 122.

Lathrop v. Bank, 8 *Dana*, 114.

He says further: "By a general law of Illinois, enacted in 1859, any three or more persons of full age, citizens of the United States, a majority of whom were also required to be citizens of that State, could become a body politic and corporate for benevolent, charitable, educational, literary, musical, scientific, religious or missionary purposes, and in their corporate capacity take, receive, purchase and hold real and personal estate and for charitable purposes only, sell and convey the same."

Laws of Ill. 159, *p.* 20, *Gross, Rev.* 124.

"Corporations formed under that law were made capable of taking, holding or receiving any property, real estate or personal, by gift, purchase, devise or bequest, or in any other manner. As to real estate purchased by them for their own use, authority was given to sell the same, with any building erected thereon, and invest the proceeds in the purchase of another lot, or in the erection of another building or both. As to such as was devised

or given to them for any specified benevolent purpose, authority was conferred to sell the same and apply the proceeds in aid of that purpose, such real estate, however, not to be held more than five years."

After citing Private Law, 1863, p 26, he proceeds by saying: "The conclusion is not to be avoided that the State, prior to 1870, authorized, if it had not steadily encouraged, the organization of societies for benevolent, charitable, religious and missionary objects, and endowed them with capacity to acquire by purchase, gift or devise, real estate for the purposes of their creation."

The misconstruction, we claim, thus far to have been made by Justice Harlan, of our statutes of Illinois is, that these statutes by him cited embrace all the statute laws of Illinois then defining the powers of the corporations of all the names or classes mentioned in the act of 1859, religious societies being among them, and that there is not to be found in the statutes of Illinois of that date any limitation of the quantity of real estate that any of such corporations could, under such law, take and hold. The statute cited by him is of date 1859.

At the time of the adoption of this act, the 44th section of chapter 35, revised statutes of 1845, entitled "corporations," was in force which authorized any religious society or corporation then existing, or which might thereafter be formed "to receive by gift, devise or purchase, any quantity of land *not exceeding ten acres, etc.*"

Here, then, was an express limitation of the power of religious corporations (one of the class specifically named

in the act of 1859) to take or hold more than *ten acres* of land, and yet this statute is not referred to, nor given any force or construction in the Younts case: in other words this section of the statute was ignored or overlooked in the opinion in the Younts case, and yet it was older and of as much force as the sections cited and relied upon by the court.

Our interpretation of the opinion of the court in the Younts case up to this point is, that if the American and Foreign Christian Union was a religious corporation, then the court misconstrued the statutes of Illinois with respect to the power of like corporations organized under the laws thereof to take and hold real estate in Illinois; but if not a religious corporation, then the court has not, in any sense, passed upon the question we are making in the case in hand, and has give a construction of the statues of Illinois with respect to corporations not of the class denominated religious, so that in either view the Younts case cannot be held as an authority against the main questions we make in this case.

In support further of our construction of the statutes 1859 and 1845 before referred to by us, we shall draw largely upon the last declaration of the Supreme Court of Illinois upon this subject in the very able and clear opinion of the court by Justice Mulkey, in the case of St. Peter's Roman Catholic Congregation v. Nicholas Germain, reported in the 104 Ill., page 440, opinion filed June 21st, 1882.

The case was ejectment. It appeared that Catharine

Agnes Germain, being the owner of a valuable tract of land, situated in St. Clair county, Illinois, consisting of about eighty acres, on the 2d day of November, 1878, executed and delivered to the St. Peter's Roman Catholic Congregation a deed therefor, the question in the case being, and the only one, whether the title to the lands in dispute passed by such deed. Justice Mulkey says: "The determination of this question depends upon the construction that must be given to the statutes then in force authorizing religious corporations to acquire lands in this State. By the 2d section of the act of 1869, above mentioned, religious societies organized under it are authorized "to receive, hold, dispose of and convey any kind of property," and by the 10th section the act is declared to be "subject to any limitation or modification which may hereafter be enacted by general law as to the amount of real estate to be held by the corporations, respectively, provided for herein." It will be perceived this act contains no limitation as to the quantity of lands religious societies under it may "receive" and "hold," but, as we have just seen, the legislature, by the 10th section, reserves the right to limit and modify the amount "to be held" by them. At the time of the adoption of this act, the 44th section of chapter 35, Revised Statutes 1845, entitled "corporations," was in force, which authorized any religious society or corporation then existing, or which might thereafter be formed, "to receive by gift, devise or purchase, any quantity of land *not* exceeding ten acres, etc." This act continued in force until in 1872, when it was repealed and section 42, of chapter 32, of the present

revision was adopted in its stead, which provides that "any corporation that may be formed for any religious purposes under this act or under any law of this State for the incorporation of religious societies, may receive by gift, devise or purchase, any land *not exceeding ten acres*," etc.

By comparing the two sections, it will be perceived that, so far as the present inquiry is concerned, they are substantially the same, so that the adoption of the latter section was in effect merely continuing in force the former. This being so, it follows that in determining what, if any, effect the latter section had on the conveyance, it must be treated precisely as if it existed at the time of the adoption of the act of 1869.

The question then arises, assuming as we do, the limitation contained in these two sections was in force at the time of the adoption of the act of 1869, and that it has continued to be in force ever since, what, if any, effect did it have on the conveyance in question. As already observed, the act of 1869 contains no limitation upon the power of a religious corporation organized under it to acquire real estate, and if that act is to be given effect without regard to the limitation contained in the two sections we have been considering it is clear the title to the land in question passed by the deed. But can such a construction of these acts be maintained upon legal principles?

Both of the sections containing the limitation are undoubtedly conceived in terms sufficiently broad and

comprehensive to include religious corporations organized under the act of 1869 as *well as others* and no reason has been suggested, nor are we able to perceive any, why they do not so include them. Would not religious societies organized under other acts have the same right, and with the same show of reason, to contend that they do not fall within the limitation?

And if they are to be excluded from its operation also, what effect could be given to it?

We see no fair, reasonable or just mode of inforcing the limitation except by extending it to *all religious societies alike.* In doing so we but conform to the general recognized rule that all statutes relating to the same subject should be construed "*in pari materia*," so as to give them all their appropriate effect and operation. And courts have no right to depart from this rule unless there is some imperative reason for doing so, which is clearly not the case here. The fact that the legislature failed to impose a limitation in the act of 1869, is no evidence they intended there should be none. Why provide for such limitation when there was already a general law imposing one? To have inserted a similar provision in that act would have been simply to declare what the law would be without it, and the fact that nothing was said on the subject is simply evidence that the existing limitation was satisfactory to the legislature.

In the light of judicial history and the legislation of this country on the subject, we can not for a moment believe that it was the intention of the legislature to put

it in the power of any religious society or corporation to acquire lands to any indefinite extent, as is claimed here.

It has ever been the policy of this country, including our own state, to keep landed estates as much unfettered as possible, so that their free transfer from one person to another may not be interrupted or hindered, and it will not be denied that to permit corporations to acquire real estate to an unlimited extent would be destructive of this policy. Under the legislation of our state, which we have been considering, a religious corporation is authorized to receive or acquire lands to the extent of ten acres, and no more. Any amount in excess of that is expressly forbidden by statute, and it follows that all conveyances, deeds or other contracts made in violation of this prohibition, are absolutely void.

It is a well settled rule that where a corporation is forbidden to take or receive lands, such a prohibition goes to its capacity to acquire and a deed made to it under such circumstances passes no title, such a conveyance being absolutely void, and the correctness of this rule is conceded by the learned counsel for plaintiff in error. It is claimed, however, this rule only applies where the prohibition is total and not merely partial, as in this case—that where there is a capacity to take to a limited extent, and a conveyance is made for a quantity in excess of that which the law permits, the title will, nevertheless, pass to the whole the right of the State to interpose for the excess. We cannot give our adhesion to this doctrine, for it would be conceding that a corporate body might

clothe itself with the legal title to an estate in contravention of an express provision of the statute, which is inconsistent with well recognized principles.

Moreover, we are of opinion that conceding the act of 1869 was not adopted subject to the limitation contained in the 44th section of the act of 1849, as we have seen it was nevertheless the reservation in the 10th section of the former act (re-enacted in act 1872, chapter 32, as sec. 47) of the power to regulate by general law the amount or quantity of land which corporations organized under it might hold, fully authorized the legislature—assuming the power did not exist independently of it—to prescribe the amount or quantity of land which such corporations might take or acquire.

If the legislature has the power—and this is conceded—to say these organizations shall not hold to exceed a specified number of acres of land, we are of opinion, as the most effectual way of enforcing such power, it may say "they shall only take or acquire the specified quantity."

Believing that we have now shown that if the defendant corporations, the Boards of Home and Foreign Missions of the Presbyterian Church, had been incorporated under the laws of Illinois in force in 1883, they could not take or hold more than ten acres of land each, we now recur to the further consideration of the opinion of Justice Harlan in the Younts case, wherein he seeks to show the power of foreign corporations to take and hold real estate in another state where they are authorized by

the laws of the state under which they are organized to do so. He says: "In harmony with the general law of comity obtaining among the states composing the Union, the presumption should be indulged that a corporation of one state, not forbidden by the law of its being, may exercise within any other state the general powers conferred by its own charter, unless it is prohibited from so doing, either in the direct enactments of the latter state, or by its public policy, to be deduced from the general course of legislation, or from the settled adjudications of its highest court. There was here no such direct legislation during or prior to the year 1870, nor can the existence of such a public policy be inferred from the general course of legislation, or judicial decisions in Illinois, up to and including that year, in relation to religious, benevolent, charitable or missionary societies created in other states."

He concludes, then, that there was, up to 1870, no direct legislation nor declared policy by judicial decisions in Illinois which prohibited religious, benevolent, charitable or missionary societies created in other states from exercising the powers and functions authorized by the states of their creation. In this position or conclusion we say there is a sophistry, and that it is to be found in the failure of the learned judge to observe a necessary distinction as to some of the classes of foreign corporations, which distinction would recognize a limitation upon the unlimited exercise of power which the language of the learned judge would imply. That is, we admit that in so far as he concludes that there was no direct legislation nor judicial declaration of any policy in Illinois which

prohibited, in 1870, any of the classes of foreign corporations named from exercising the rights and powers in that state, with which the state of their being had clothed them, he is correct, but it is equally certain, and, we think, quite as demonstrable, that there has been since the act of March 1, 1885, of Illinois, (this being the same, Sec 44, Chap. 35, Rev. St., 1845,) a positive limitation by direct legislation in Illinois, as to the extent to which corporations of the class denominated religious, could exercise their powers as to the taking and holding of real estate in Illinois, the limit being fixed at ten acres of land, and beyond this the right to exercise such power ceased. The Supreme Court of Illinois, as late as the case of the Catholic Congregation v. Germain, 104 Ill., 440, decided September Term, 1882, recognize this policy and so construe this statute. We presume it will not be denied that it has been the settled policy of Illinois, since 1845, before that, and up to the present time, not to grant or allow to a foreign corporation, of any class, the exercise of any greater powers in Illinois than those granted or allowed to corporations of Illinois.

The last full discussion of this position or policy in Illinois is to be found in the case of Stevens v. Pratt et als, 101 Ill., p. 206, opinion by Justice Scholfield.

He says: "No corporation is excluded from doing business in this State. Simply 'foreign corporations and the officers and agents thereof, doing business in this State' are placed on an equality, to the extent that they shall exercise no greater or different powers, and shall be

subject to the same regulations and restrictions and governed by the same rules of law in these respects, with corporations of like character organized or to be organized under the general laws of this State, the meaning will, obviously, not be changed, but may be placed in a stronger light by a little transportation of language, thus: 'Where the general laws of this state provide for the organization of corporations, foreign corporations of like character doing business in this State shall exercise no greater or different powers and shall be subject to the same liabilities, restrictions and duties.' The manifest and only purpose was to produce uniformity in the powers, liabilities, duties and restrictions of foreign corporations of like character, and bring them all under the influence of the same law."

While this last declaration of policy by the Supreme Court of Illinois, recognizes the right of foreign corporations to do business in Illinois, and to take and hold real estate in Illinois, yet it expressly limits them, respectively, in the exercise of such powers in Illinois to the same extent to which like corporations, organized under the laws of Illinois, are by such laws, limited. Hence, we conclude that as the Supreme Court of the United States in the Younts' case has not attempted to give a construction to the statutes of Illinois, as to whether they do not and did not limit the exercise of the powers of religious corporations as distinguished from other corporations not of this class, we are justified in saying, as we did earlier in this discussion, that the decision in the Younts' case does not become a decision of one of the vital questions in the

case in hand. In other words, does not decide, nor attempt to decide, the question as to whether a *foreign religious corporation* may or may not take lands by devise in Illinois to the extent of ten acres and no more.

And we say, with the utmost assurance of being right that this court will not do violence to a single question decided in the Younts' case by holding in this case that a foreign religious corporation, although empowered by the State of its being, to take lands to an unlimited extent in such State, cannot in Illinois neither take nor hold more than ten acres.

We might add that the decision in the Younts' case was based upon a construction of the statutes of Illinois up to 1870 and mainly of the act of 1859, while in this case the statutes in force in Illinois up to December, 1883, must furnish the basis for construction in the present case, and inasmuch as the court in that case in the conclusion of its opinion claims to find support of its construction in the laws of Illinois in 1859, by the act of 1872, we will briefly cite the statutes in force in 1859 as also of 1872, and show what we conceive to be a considerable difference in them upon the question under discussion and a further positive support of our claims as to the limitation of the powers of the defendant corporations to take more than ten acres of lands in Illinois.

In 1859, the 44th section of chapter 35, Revised Statutes, 1845, was in force, which read:

"Sec. 44. It shall be lawful for the members of any society or congregation heretofore formed in this State

for the purposes of religious worship, and for members of any society or congregation which may hereafter be formed for the purposes aforesaid, to receive by gift, devise or purchase, a quantity of land not exceeding 10 acres, etc."

There was also then in force Sec. 1, Laws 1859, which reads:

"Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of this State, who shall desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious or missionary purposes, etc., * * *" may become incorporated, etc.

"Sec. 7. The corporations formed under this act may sell and dispose of any real estate they acquire by purchase, gift or devise as follows: * * * *."

In 1872 a general statute was passed dividing the corporations into two, and only two, classes, one class being "CORPORATIONS FOR PECUNIARY PROFIT," the other, "CORPORATIONS NOT FOR PECUNIARY PROFIT," chapter 32, 285, Revised Statutes, Illinois.

"CORPORATIONS FOR PECUNIARY PROFIT."

"Sec. 1. That corporations may be formed in the manner provided by this act for any lawful purpose except banking, insurance, real estate brokerage, the operation of railroad and the business of loaning money, etc."

By section 29, under the heading

CORPORATIONS NOT FOR PECUNIARY PROFIT.

It is enacted, "Sec. 29, societies, corporations and associations (not for pecuniary profit) may be formed as hereinafter provided. Any three or more persons, citizens of the Unitee States, who shall desire to associate themselves for any lawful purpose, other than for pecuniary profit, may make, etc."

Sec. 35, of the same act, provides: "The foregoing provisions shall not apply to any religious corporations * *."

Sec. 42, of same act, provides: "Any corporation that may be formed for *religious purposes* under this act, or under *any law* of this state, for the incorporation of religious societies, may receive, by gift, devise or purchase, land, not exceeding in quantity (including that already held by such corporation) ten acres, etc., * * *."

Now does it require any forced construction to place all benevolent, charitable, missionary and religious societies under the provisions or in the class of this statute, providing for corporations not for pecuniary profit just such as the appellant society in the Younts case? We think not. On the other hand the natural classification of such societies is in this class, and Sec. 1, providing for corporations for pecuniary profit would seem naturally not to include them. But if it were possible to create a corporation for *religious* purposes under this first section, then the limitation of section 42 applies equally to such society or corporation, and limits the land such corporation may hold to ten acres. The language of the section is: "*Any corporation* that may be formed for *reli-*

gious purposes under this act or under *any law of this state* for the incorporation of religious societies," etc. No matter under what act or statute of the state the corporation may be formed, if it be a corporation (although not a church or church society) "formed for religious purposes, it is limited to ten acres as the extent to which it may take or hold lands in this state." This broad provision was not in any former statute, and seems not to have received any consideration by the court, and yet it seems to us it is conclusive and unavoidable upon this question of limitation of the powers of the defendant corporations in this case.

In conclusion of the argument we say an analysis of the opinion in the Younts case shows beyond question that the vital question, as to the rights and powers of the defendant corporations in Illinois, has not been discussed or determined in the light of the statutes and decisions in Illinois up to December, 1883, the date of the death of the devisor in this case.

We might here add that while we concede that the defendant corporations have, under the laws of Illinois, a right to take ten acres of land by devise, each, yet the devise in this case being of "something over three-hundred acres," and no specific ten acres having been devised' we insist the entire devise must fail.

See evidence of Stone, p. 14.

Catholic Congregation v. Germain, 104 Ill., 440.

Now, having argued this case at so great length, at the risk of being tedious to the court, we think we will be ex-

cused for adding, that this case is one which, from a standpoint of equity, calls for the exercise of the greatest care and most careful consideration of the chancellor. The complainant, who seeks the construction of the will here, is an old man, extremely poor, and, as we are informed, was by the deceased uncle, the devisor, supposed to be dead, and had it been known that he was alive when this will was made would have been made the devisee of the uncle's estate, he being the only surviving heir and next of kin to deceased. What we mean by this is, there was no desire or intention on the part of the devisor to keep the complainant from taking the estate of the deceased, and no person or corporation ought to be allowed to deprive the worthy and aged heir from securing the benefits of this estate, unless clearly compelled by well settled principle of law so to do. We think, upon the whole case, we may repeat here and adopt the language of Justice Caton, in the opinion of the Supreme Court in the case of Wilkins et al. v. Atten, 18 Howard, 385-394, as expressing most clearly what we believe to be the duty of the court in such case. He says: "In speaking of expressions in a will necessary to disinherit the heir, *Chief Justice* Gibson in delivering the opinion of the court in the case of Bradford v. Bradford, 6 Whart., 244, says: 'The intention must be manifest and rest on something more certain than conjecture. The court must proceed on known principles and established rules, not on loose conjectural interpretations, nor considering what a man may be imagined to do in the testator's circumstances. The principle is applicable in all its force in a case like the

present, in which the question goes to the birthright of those who, standing in place of the common law heir, are not to be disinherited except by express devise, or as is said in 1 Powell on Devises, 199, by application so inevitable that an intention to the contrary cannot be supposed.'"

To recapitulate the argument we say:

1st. The devise is void for uncertainty. 1st. As to the person of the donee; and, 2d. As to the purpose of the gift.

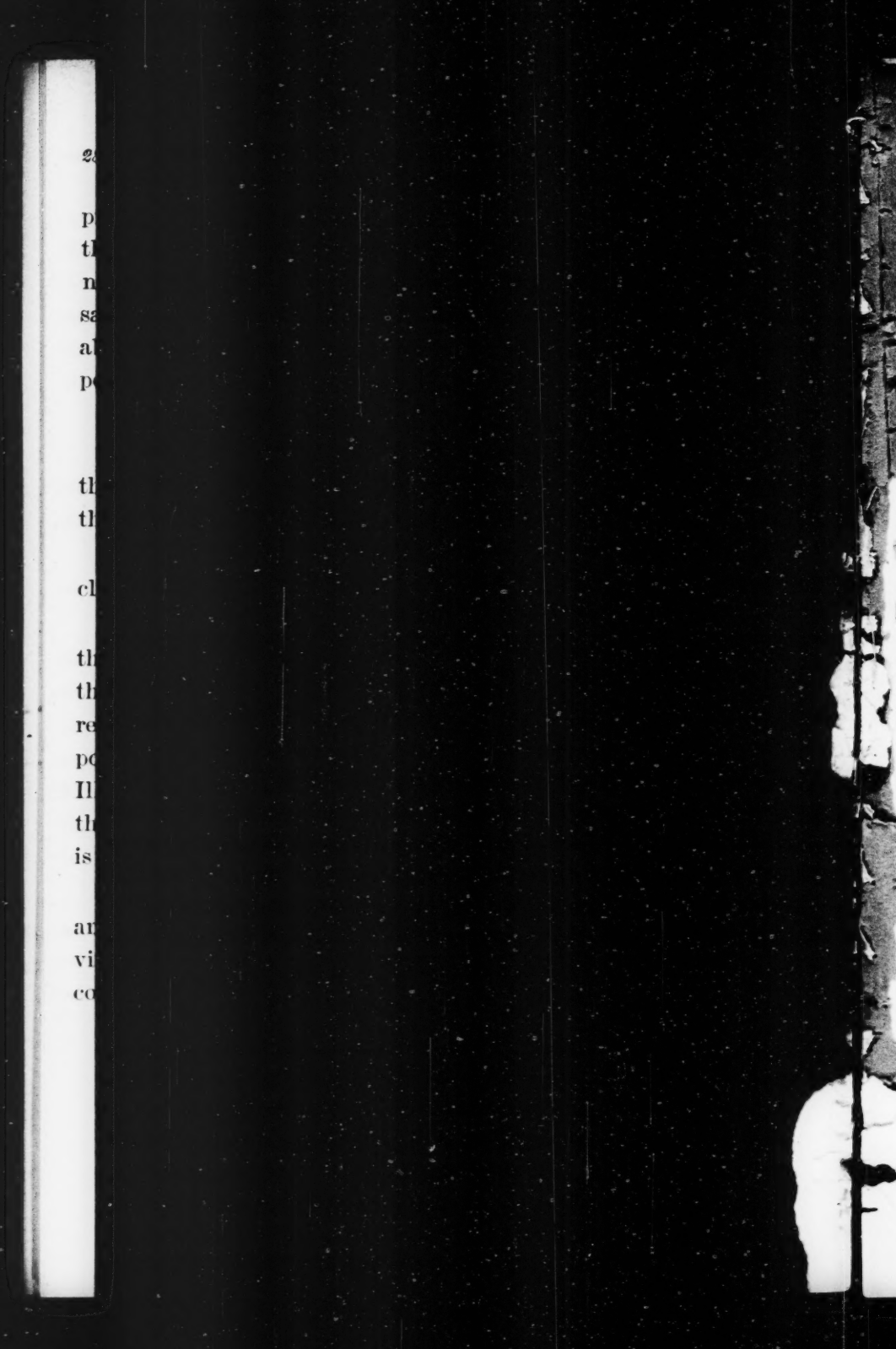
2d. The devise is void because no specific use is declared.

3d. The devise, being of real estate, the defendants, the "Board of Home and the Board of Foreign Missions of the Presbyterian Church," being foreign corporations and religious societies, or societies organized for religious purposes, they cannot take in Illinois, under the statutes of Illinois, beyond ten acres each of lands in Illinois, and the devise being of more than 300 acres of land, jointly, is void and must fail.

Believing we are right in the positions herein taken and argued by us, we sincerely trust that the large and vital interest of our client may be fully protected by this court.

Respectfully submitted.

D. T. LITTLER.
BRADLEY & BRADLEY.
L. A. WHIPP, and R. E. LEWIS.
Solicitors for Appellant.



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SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, A. D. 1886.

No. 1168.

ROBERT GILMER,

Appellant.

vs.

WILLIAM W. STONE AND JOSEPH M. WALKER, EXECUTORS OF ROBERT GILMER, DECEASED; THE BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, AND THE BOARD OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA.

Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BRIEF OF APPELLEES.

SPRINGFIELD, ILL.:
H. W. ROKKER, STATE PRINTER AND BINDER.
1886.

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Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BRIEF OF APPELLEES.

The appellant representing himself as uncle and sole heir at law of Robert Gilmer, deceased, filed his bill in the Circuit Court of the United States for the Southern District of Illinois,

on the 20th day of May, A. D. 1885, for the purpose of having construed by the Court the eleventh section of the will of the testator to the end that the probate of the will, in so far as it related to the eleventh clause or section of said will, be set aside, and that the balance of the estate, after paying bequests, legacies, debts, etc., be paid to complainant. The will referred to in the bill as Exhibit "A" is as follows:

"I, Robert Gilmer, of Irish Grove, Menard County, and in State of Illinois, declare this to be my last will and testament. I give and bequeath and devise my estate as follows:

First—I give [and] bequeath to Lucena B. Shelly my wearing apparel and bed-clothes.

Second—I also bequeath to Rebert Shelly my organ; also one hundred dollars to pay tuition in music, to be held by administrators and paid by them when tuition becomes due.

Third—I also bequeath to Jane E. Stone my buggy and harness.

Fourth—I also bequeath my library to the parsonage of the Presbyterian Church of Irish Grove.

Fifth—I also bequeath to the trustees of the Irish Grove Cemetery money sufficient to pay the indebtedness of the cemetery.

Sixth—Also appropriate money sufficient out of the general fund for the removal of my father's family and the purchase of a lot in the new addition of the Irish Grove Cemetery; also one thousand dollars for erection of a monument to the same.

Seventh—I also bequeath to Jennie L. Stone five hundred dollars.

Eighth—I also authorize my administrators to loan W. J. Bollman, of Belleview, Neb., twelve hundred dollars.

Ninth—I also bequeath five hundred dollars toward the erection of a Presbyterian Church in Greenview, Ill., provided the same shall be built within two years from this date; if not, the money shall revert back to the administrators to be used as hereinafter provided.

Tenth—I also bequeath fifty dollars to be paid on the minister's salary of the Presbyterian Church of Irish Grove for the year 1884.

Eleventh—I also, after paying all debts and claims against my estate, bequeath and devise the remainder of my estate to be equally divided between the Board of Foreign and the Board of Home Missions.

I appoint William W. Stone and Joseph M. Walker executors of this, my will and testament.

I witness whereof I, Robert Gilmer, have hereunto set my hand and seal the twenty-fourth day of December, one thousand eight hundred and eighty-three. ROBERT GILMER. [Seal.]"

The bill was answered by the defendants, replication filed, testimony taken and case submitted after full argument at the January term, 1886, and a decree rendered by the Court dismissing the bill.

Complainant, after this decree, filed a petition for a rehearing, but subsequently dismissed the same and prosecuted an appeal to this Court.

The first point made in the bill, "that the terms or language employed in said attempted devise or bequest, named in said section or clause 11th of said will, are so vague, indefinite and uncertain that they are inoperative and void and of no effect," is not maintainable. This clause provided first for the payment of debts and claims against the estate of the testator and next for the division of the remainder of his estate equally between the Board of Foreign and Board of Home Missions.

When all of the clauses of the will are properly considered, together with the evidence disclosed by the record showing that the testator was a member of the Presbyterian Church at Irish Grove, and had been since 1859; was an active, zealous and prompt supporter and contributor and attendant; was an elder and member of the session; was prompt and punctual in those relations; that the church to which he sustained such relations

was in the habit of taking up collections for the Board of Home Missions and Board of Foreign Missions of the Presbyterian Church of the United States; that the testator uniformly for a series of years, and only terminating with his death, appeared especially interested in these boards, "and always desired his means should be contributed in that direction;" it becomes clear that by the terms, "the Board of Foreign Missions and the Board of Home Missions," used in the connection in which these words were, the testator meant the Board of Foreign Missions of the Presbyterian Church of the United States and the Board of Home Missions of the Presbyterian Church of the United States. It can scarcely admit of well founded doubt that the circumstances under which the words were used by the testator in the will, together with his declarations before the making of the instrument, may be proven in order to determine what meaning is to be given to the words as used. This may well be considered the settled doctrine alike of the English and American courts.

Phillips on Evidence, Vol. 2, 745–756.
Wigram on Extraneous Evidence, 118 and 138.
Parsons on Wills, Common Law Library, page 35.
Jarman on Wills, 1 Jarman, chap. 13, and notes.

"The American courts have very generally adhered to the rule that the charities for religious purposes shall go in the direction and for the propagation of the doctrine which the donor desired to advance, and for this purpose the particular tenets held by the donor will be inquired into, and when ascertained will be presumed to be the doctrines which it was the purpose of the trust to advance."

Redfield on Wills, vol. 2, sec. 64, page 870.
King v. *Ackerman*, 2 Black, 408.
Bernasconi v. *Atkinson*, 17 Jur., 128.
Bradley v. *Reece et al.*, 113 Ill., 327.

Heuser v. *Harris*, 42 Ill., 425.
Hinckley, Executors, etc., v. *Thatcher*, 139 Mass., 477.
Allen's Executors v. *Allen*, 18 Howard, 385.

In the last cited case the Court, at page 393, says: "That the Court may put itself in the place of the testator, by looking into the state of his property and the circumstances by which he was surrounded when he made the will, is not only true as a general proposition, but without such information it must often happen that the will could not be sensibly construed."

It is further claimed in the bill that if the corporations, home and foreign missions, are for religious purposes, then, unless they were organized under the laws of Illinois, "they can not legally receive by bequest or devise real estate of any amount or kind whatever."

It is sufficient to say here that this claim is founded on a misconception of the policy, statutes and decisions of the Illinois courts.

What may probably be argued with more plausibility is, that under the 42d section of the Illinois Statutes upon corporations no corporation organized in that State for religious worship can receive by gift, devise or purchase land in excess of ten acres, and that, like foreign corporations to whom devises may be made would be subject to the same limitations.

Before troubling the Court with any discussion on this point, we desire to insist that there is nothing in the record making such discussion really necessary. No lands were devised by the testator.

This eleventh section or clause provides: "I also, after paying all debts and claims against my estate, bequeath and devise the

remainder of my estate to be equally divided between the Board of Foreign and the Board of Home Missions."

The evidence shows that the testator owned some land—probably three hundred acres. He evidently intended his executors to convert it into money, which they had done prior to the filing of the bill in this case. This land was heavily burdened by debts, bequests, legacies, etc. The personal estate, as shown by the testimony, amounted to about $4,200, and after exhausting it there was a large deficit—the debts against the estate amounting to about six or seven thousand dollars. How did the testator expect that the remainder of his estate would be divided? Evidently by his executors. It is not probable that he thought it practicable for these personal representatives to make equal divisions between the two charitable corporations of the lands remaining after payment of debts, legacies and bequests, but his idea plainly was that the land be converted into money and debts, bequests, legacies, etc., be paid, and then the remainder of the money in the executors' hands divided equally between the Foreign and Home Boards of Missions of the Presbyterian Church. This is the plain, direct and intelligent method which a plain, practical, intelligent man would contemplate. While we do not therefore regard it at all necessary, yet for argument sake, we may well admit that after debts, legacies and bequests were paid there remained land—one hundred acres, or even more—in the hands of the executors for a division between the two several missionary boards. Can these foreign corporations, organized under the laws of New York, or either of them, take land under the laws of Illinois in excess of ten acres?

The contention of appellant is, that they can not, and section 42 of chapter 32 of Revised Statutes, Starr & Curtiss' edition, is cited, and *St. Peter's Roman Catholic Congregation* v. *Nicholas Germain*, 104 Ill., 440, referred to in support of this view.

We do not think it will now be contended that these foreign corporations, their objects and purposes being well considered, are disfavored by the policy, statutes or decisions of Illinois, but a fair and reasonable concession in argument would be, that they occupy the same position as its own corporations organized for like purposes.

The 42d section of the Illinois statute on Corporations must be considered and construed in connection with the 35th section of the same statute. The latter section is the first occurring under the head or classification of "Religious Corporations," and provides that "any church, congregation or society formed for the purpose of religious worship, may be incorporated in the manner following." The several intervening sections, 36, 37, 38, 39, 40 and 41, provide for the manner of organization, etc., and section 42, in fixing a limitation to the right of corporations formed for religious purposes to hold land under that act, namely, the act for religious corporations, had reference to "any church, congregation or society formed for the purpose of religious worship," as specified in the 35th section. These missionary boards—corporation defendants—as their charters respectively show, were not formed for the purpose of religious worship. They fall within the classification of charitable bodies. That, in a majority of instances, these charitable bodies are of a religious or semi-religious character—like Bible Societies, Tract Societies and Missionary Societies generally—does not at all disincline the American courts to uphold as charities all donations made to them. It may well be admitted, for the sake of the argument, that churches, congregations and religious societies formed for religious worship, when incorporated under the Illinois statute, in addition to burying grounds and grounds for camp-meeting purposes, are limited

to ten acres of ground for houses, buildings, or other improvement, for the convenience and comfort of such congregation, church or society.

The last mentioned do not belong to the class, not for pecuniary profit, having the right to take, hold and dispose of real estate for purposes of their organization, and distinct from organizations for religious worship.

This view is in harmony with *Christian Union* v. *Yount*, 101 U. S. 352, and is not inconsistent with *St. Peter's Roman Catholic Congregation* v. *Nicholas Germain*, 104 Ill.

The last mentioned case was decided under a stipulation as to facts to the effect that "plaintiff is and was at the time of conveyance, a religious corporation, organized and existing under the act of March 8, 1869, entitled 'An Act to provide for the holding of Roman Catholic churches, cemeteries, and other property,'" and does not conflict with the uniform rule of decision in this country, upholding all charitable gifts and donations, coming either *inter vivos* or by way of testamentary disposition.

The Board of Foreign Missions, under its charter, had the purpose "of establishing and conducting Christian missions among the unevangelized or Pagan missions, and the general diffusion of christianity." And the Board of Home Missions had for its objects, as expressed by its charter, "to assist in sustaining the preaching of the gospel in feeble churches and congregations in connection with the Presbyterian church in the United States, and generally to superintend the whole work of home missions in behalf of said churches, as the General Assembly shall from time to time direct; also, to receive, take charge of, and disburse all

the property and funds, which at any time and from time to time may be entrusted to said church or said Board for home missionary purposes."

These expressed purposes of defendant corporations make them charitable. We make no attempt at a definition which would embrace all gifts for charitable uses or purposes, but adopt the language employed by the eminent lawyer, Mr. Binney, in his argument in *Vidal* v. *City of Philadelphia*, 2 How. U. S. 127: "Whatever is given for the love of God or for the love of your neighbor—in the catholic and universal sense, given from these motives and to these ends, free from the stain or taint of every consideration that is personal, private or selfish—is a gift for charitable uses, according to the religion from which the law of charitable uses is derived."

The last point attempted to be raised in the bill in this case that the eleventh clause or section of said will "does not specify to what particular foreign or home mission the said demise is to be given," and does "not designate for what use said devise is to be given, whether for religious, charitable, or other purposes, nor does it designate any party or parties as trustees to receive and control said trust or devise," we have to some extent already noticed. There is no occasion to invoke any doctrine of trusts in this case. The devise was a certain one given to definite, well known, and long established charities.

In the clause of the will already mentioned, in order that it may have practical effect, it is not necessary to prepare or direct any scheme for the distribution of the donor's property. Positive and clear directions were given by the testator himself to his executors in this regard.